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Illinois. Laws, statutes, etc. Railroad law

LAWS OF ILLINOIS

RELATING TO

Railroads and Warehouses

Compliments of

M. H. CHAMBERLIN,

Secretary Railroad & Warehouse Commission,

SPRINGFIELD, ILLS.

ECTION AND REGISTRATION
), THE MAJORITY AND
T OF THE UNITED
MUNN & SCOTT

vs. THE PEOPLE OF THE ... ILLINOIS,
AND THE "GRANGE CASES."

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Illinois. Laws, statutes, etc. Railroad law

LAWS OF ILLINOIS

RELATING TO

Railroads and Warehouses

WITH

APPENDIX,

CONTAINING THE RULES GOVERNING THE GRAIN INSPECTION AND REGISTRATION DEPARTMENTS IN THE CITY OF CHICAGO. ALSO, THE MAJORITY AND MINORITY OPINIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE "WAREHOUSE CASE" OF MUNN & SCOTT vs. THE PEOPLE OF THE STATE OF ILLINOIS, AND THE "GRANGE CASES."

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THE COMMISSION.

WILLIAM M. SMITH, Lexington.
GEORGE M. BOGUE, Chicago.
JOHN H. OBERLY, Cairo.

WILLIAM M. SMITH, *Chairman.*
Mc. H. CHAMBERLIN, *Secretary.*

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INTRODUCTORY NOTE.

This volume is compiled in compliance with an order of the Board of Railroad and Warehouse Commissioners of the State of Illinois. The provisions of the law relating to railroads and warehouses being embodied in the bulky form of the Revised Satutes of 1874, coupled with the fact that some very important legislation on these subjects is contained in the session laws of 1875 and 1877, led the Commissioners to regard this compilation not only as a matter of convenience, but almost a necessity. It contains all the provisions directly relating to railroads and warehouses, and also the provisions of a general character in which those subjects are incidentally included, as in the chapters on "Corporations" and "Revenue," as also numerous paragraphs on "Service," "Jurisdiction of Courts," "Bridges," etc., etc. It also embraces the Constitutional provisions and the congressional statute relating to the Illinois Central Railroad, with an appendix containing the rules for the government of the inspection and registration departments, the rules of inspection, and the majority and minority opinions of the Supreme Court of the United States in the warehouse case of Munn & Scott vs. The People of the State of Illinois, and the "Grange cases."

The order of the Revised Statutes of 1874, as far as practicable, has been observed. The section [§] numbering immediately preceding the text is that of the original act, while the references at the foot of each section directs the reader to the paragraph, chapter, and page where the law will be found in the Revised Statutes of 1874, or the session laws subsequently enacted.

Mc. H. CHAMBERLIN,
Secretary of Board.

SPRINGFIELD, ILL., October, 1877.

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ANALYSIS.

Constitutional Provisions.

Bill of Rights; Public Moneys; Revenue; Corporations; Railroads; Warehouses; Separate Sections.

CHAPTER I.

Corporations. Changing name and place of business; increasing and decreasing number of directors; consolidation; evidence and depositions; usury; judgment and decrees, and manner of enforcing same; redemption of real estate sold under execution: changing directors in certain cases; quo warranto; levy and collection of taxes of incorporated cities.

CHAPTER II.

Eminent Domain.—Exercise of the right; procedure; protection of State Institutions.

CHAPTER III.

Railroads.—Provisions for incorporating, constructing, maintaining, and operating, and for limiting powers of; borrow money: make contracts; facilitate transportation and trade; lessees may purchase; union depots; fencing and operating; fires by locomotives; frauds on travelers; protection of passengers; transporting and delivery of grain; extortion and unjust discrimination; lien of contractors; bonded debts of municipalities—act of 1869; act providing for cancellation of bonds; state and county treasurers to deliver up bonds and coupons which have been paid; payment of registered indebtedness of counties, cities, etc.; act of 1877, limiting time of liability of municipal corporations; city and village legislation; seven per cent. gross income Illinois Central railroad tax; execution of trust by trustees of Illinois Central railroad; proof of title to the lands granted to the Illinois Central railroad company; act of congress—1850—relating to Illinois Central railroad.

CHAPTER IV.

Warehouses.—Warehouses, and warehousing of grain; further concerning warehouses and warehousing; leasing public levees for warehouse sites.

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CHAPTER V.

RAILROAD AND WAREHOUSE COMMISSIONERS.—Establishment of board, and its duties prescribed.

CHAPTER VI.

REVENUE.—Assessment of property, and the levy and collection of taxes; assessment of bridges across navigable streams; assessment of property, and levy and collection of taxes by incorporated cities.

CHAPTER VII.

CRIMINAL CODE.—Various acts in relation to criminal jurisprudence; act relating to Texas and Cherokee cattle; obstructing business of railroad companies.

CHAPTER VIII.

MISCELLANEOUS PROVISIONS.—Justices of the peace, and their jurisdiction; practice in courts of record; gateways, roads and bridges; sale of condemned property by common carriers; sale and conveyance of right of way by township trustees; plats; liability of common carriers; State contracts.

APPENDIX.

Rules governing inspection; office of inspector; registrar; rules for grading grain; supreme court decisions.

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CONSTITUTIONAL PROVISIONS.

Adopted in convention May 13, 1870; ratified by the people July 2, 1870. In force August 8, 1870.

1. Private property—Compensation.
2. State not to assume liabilities,
3. Special legislation prohibited.
4. Revenue—How raised.
5. Corporations, by special law forbidden.
6. Limit for existing special charters.
7. Protection of corporate stockholders.
8. Railroads maintain public office.
9. Rolling stock, etc.; personal property.
10. Consolidations prohibited.
11. Railroads public highways.
12. For what stock is to be issued.
13. Eminent domain inviolate.
14. Unjust discrimination prevented.
15. What constitutes public warehouses.
16. Requirements of owners of warehouses.
17. Property stored may be examined by whom.
18. Railroad companies to weigh or measure grain.
19. Railroad companies to deliver grain to consignee.
20. General Assembly to govern warehouses.
21. General Assembly to provide for the inspection of grain.
22. Contracts of Illinois Central railroad intact.
23. Municipal subscriptions forbidden.
24. State not to loan credit to railroads.
25. Saving clause for city of Quincy.

ARTICLE II.

1. [PRIVATE PROPERTY—COMPENSATION.] § 13. Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the State, shall be ascertained by a jury, as shall be prescribed by law. The fee of land taken for railroad tracks, without consent of the owners thereof, shall remain in such owners, subject to the use for which it is taken.

ARTICLE IV.

2. [STATE NOT TO ASSUME LIABILITIES.] § 20. The State shall never pay, assume or become responsible for the debts or liabilities of, or in any manner give, loan or extend its credit to or in aid of any public or other corporation, association or individual.

3. [SPECIAL LEGISLATION PROHIBITED.] § 22. The general assembly shall not pass local or special laws in any of the following enumerated cases, that is to say: for—

Granting to any corporation, association or individual the right to lay down railroad tracks, or amending existing charters for such purpose.

Granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever.

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The general assembly shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this State or to any municipal corporation therein.

ARTICLE IX.

4. [REVENUE—HOW RAISED.] § 1. The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property; such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, venders of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.

ARTICLE XI.

5. [CORPORATIONS, BY SPECIAL LAW, FORBIDDEN.] § 1. No corporation shall be created by special laws, or its charter extended, changed or amended, except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the State, but the general assembly shall provide, by general laws, for the organization of all corporations hereafter to be created.

6. [LIMIT FOR EXISTING SPECIAL CHARTERS.] § 2. All existing charters or grants of special or exclusive privileges, under which organization shall not have taken place, or which shall not have been in operation within ten days from the time this constitution takes effect, shall thereafter have no validity or effect whatever.

7. [PROTECTION OF CORPORATE STOCKHOLDERS.] § 3. The general assembly shall provide, by law, that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

8. [RAILROADS MAINTAIN PUBLIC OFFICE.] § 9. Every railroad corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection,

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books, in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amount owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers. The directors of every railroad corporation shall, annually, make a report, under oath, to the auditor of public accounts, or some officer to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. And the general assembly shall pass laws enforcing by suitable penalties the provisions of this section.

9. [ROLLING STOCK, ETC., PERSONAL PROPERTY.] § 10. The rolling stock, and other movable property belonging to any railroad company or corporation in this State, shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the general assembly shall pass no law exempting such property from execution and sale.

10. [CONSOLIDATIONS PROHIBITED.] § 11. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place, except upon public notice given, of at least sixty days, to all stockholders, in such manner as may be provided by law. A majority of the directors of any railroad corporation, now incorporated or hereafter to be incorporated by the laws of this State, shall be citizens and residents of this State.

11. [RAILROADS PUBLIC HIGHWAYS.] § 12. Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the general assembly shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this State.

12. [FOR WHAT STOCKS IS TO BE ISSUED.] § 13. No railroad corporation shall issue any stock or bonds, except for money, labor or property; actually received, and applied to the purposes for which such corporation was created; and all stock dividends, and other fictitious increase of the capital stock or indebtedness of any such corporation, shall be void. The capital stock of no railroad corporation shall be increased for any purpose, except upon giving sixty days' public notice, in such manner as may be provided by law.

13. [EMINENT DOMAIN INVIOLATE.] § 14. The exercise of the power, and the right of eminent domain, shall never be so construed or abridged as to prevent the taking, by the general assembly, of the property and franchises of incorporated companies already organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when, in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right.

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14. [UNJUST DISCRIMINATION PREVENTED.] §15. The general assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

ARTICLE XIII.

15. [WHAT CONSTITUTES PUBLIC WAREHOUSES.] § 1. All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses.

16. [REQUIREMENTS OF OWNERS OF WAREHOUSES.] § 2. The owner, lessee or manager of each and every public warehouse situated in any town or city of not less than 100,000 inhabitants, shall make weekly statements under oath, before some officer to be designated by law, and keep the same posted in some conspicuous place in the office of such warehouse, and shall also file a copy for public examination in such place as shall be designated by law, which statement shall correctly set forth the amount and grade of each and every kind of grain in such warehouse, together with such other property as may be stored therein, and what warehouse receipts have been issued, and are, at the time of making such statement, outstanding therefor; and shall, on the copy posted in the warehouse, note daily such changes as may be made in the quantity and grade of grain in such warehouse; and the different grades of grain shipped in separate lots shall not be mixed with inferior or superior grades without the consent of the owner or consignee thereof.

17. [PROPERTY STORED MAY BE EXAMINED BY WHOM.] § 3. The owners of property stored in any warehouse, or holder of a receipt for the same, shall always be at liberty to examine such property stored, and all the books and records of the warehouse in regard to such property.

18. [RAILROAD COMPANIES TO WEIGH OR MEASURE GRAIN AND RECEIPT THEREFOR.] § 4. All railroad companies and other common carriers on railroads shall weigh or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of such amount to the owner or consignee thereof, at the place of destination.

19. [RAILROAD COMPANIES TO DELIVER GRAIN TO CONSIGNEE.] § 5. All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, provided such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad.

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20. [General Assembly to Govern Warehouses.] § 6. It shall be the duty of the general assembly to pass all necessary laws to prevent the issue of false and fraudulent warehouse receipts, and to give full effect to this article of the constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the general assembly the power to prescribe by law such other and further remedies as may be found expedient, or to deprive any person of existing common law remedies.

21. [General Assembly to Provide for Inspection of Grain.]— § 7. The general assembly shall pass laws for the inspection of grain, for the protection of producers, shippers and receivers of grain and produce.

Separate Sections.

22. [Contracts of Illinois Central Railroad to Remain Intact.] § 1. No contract, obligation or liability whatever, of Illinois Central Railroad company, to pay any money into the State treasury, nor any lien of the State upon, or right to tax property of said company in accordance with the provisions of the charter of said company, approved February 10, in the year of our Lord 1851, shall ever be released, suspended, modified, altered, remitted, or in any manner diminished or impaired by legislative or other authority; and all moneys derived from said company, after the payment of the State debt, shall be appropriated and set apart for the payment of the ordinary expenses of the State government, and for no other purposes whatever.

23. [Municipal Subscriptions Forbidden.] § 2. No county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporations: *Provided, however*, that the adoption of this article shall not be construed as effecting the right of any such municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption.

24. [State not to Loan Credit to Railroads.] § 3. * * * The general assembly shall never loan the credit of the State, or make appropriations from the treasury thereof, in aid of railroads.

Schedule.

25. [Saving Clause for City of Quincy.] § 24. Nothing contained in this constitution shall be so construed as to deprive the general assembly of power to authorize the city of Quincy to create any indebtedness for railroad or municipal purposes, for which the people of said city shall have voted, and to which they shall have given, by such vote, their assent, prior to the thirteenth day of December, in the year of our Lord one thousand eight hundred and sixty-nine: *Provided*, that no such indebtedness, so created, shall in any part thereof be paid by the State, or from any State revenue, tax, or fund, but the same shall be paid, if at all, by the said city of Quincy alone, and

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by taxes to be levied upon the taxable property thereof: *And, provided, further*, that the general assembly shall have no power in the premises that it could not exercise under the present constitution of this State.

STATUTORY PROVISIONS.

CHAPTER I.

CORPORATIONS.

1. Special meetings of stockholders.
2. Special meetings—How called.
3. Stockholders may vote—How.
4. Certificates of votes to be filed.
5. Changes of organization to be published.
6. Corporations not stock companies, avail of this act.
7. Changes shall not affect suits.
8. Desire to consolidate to be published.
9. Consolidated company liable for debts, etc.
10. Papers, entries and records-How proved.
11. Form of certificate.
12. Not to plead usury.
13. Stock shares subject to execution.
14. Copy of execution to be left.
15. Seizure and sale of stock shares.
16. Number of shares certified.
17. Purchaser entitled to certificate—When.
18. Purchaser entitled to dividends—When.
19. Rate of interest between citizens and corporations.
20. Meeting of stockholders.
21. Special meetings—How called.
22. Manner of voting.
23. Certificates of votes filed.
24. When writs may issue—Petition, etc.
25. Judgment.
26. Private corporations—Discovery by.
27. Taxes—Voluntary payments.

AN ACT to provide for changing the names, for changing the places of business, for increasing or decreasing the capital stock, for increasing or decreasing the number of directors, and for the consolidation of incorporated companies. In force March 26, 1872.

1. [SPECIAL MEETINGS OF STOCKHOLDERS.] § 1. That whenever the board of directors, managers or trustees of any corporation existing by virtue of any general or special law of this State, or any corporation hereafter organized by virtue of any law of this State, may desire to change the name, to change the place of business, to increase or decrease the capital stock, to increase or decrease the number of directors, managers or trustees, or to consolidate said corporation with any other corporation now existing, or which may hereafter be organized, they may call a special meeting of the stockholders of such corporation, for the purpose of submitting to a vote of such stockholders the question of such change of name, change of place of business, increase or decrease of number of directors, managers or trustees, increase or decrease of capital stock, or consolidation with some other corporation, as the case may be: *Provided*, that in changing the name of any corporation, under the provisions hereof, no name shall be assumed or adopted by any corporation similar to, or liable to be mistaken for, the name of any other corporation organized under the laws of this State, without the consent of such other corporation; and that in no case shall the capital stock be diminished to the prejudice of the creditors of such corporation, or the number of directors, managers or trustees be reduced to less than five, or increased to more than eleven: *And, provided, further*, that no corpora-

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tion shall, by virtue hereof, change its place of business from any town, county or municipality where such town, county or municipality, or any of the inhabitants thereof, or any person or persons interested therein, shall have donated or in any manner contributed any money or other valuable thing to induce such corporation to locate in such town, county or municipality: *And, provided, further*, that the provisions of this act, in reference to the consolidation of corporations, shall only apply to corporations of the same kind, engaged in the same general business, and carrying on their business in the same vicinity, and that no more than two corporations now existing shall be consolidated into one, under the provisions hereof. [R. S. 1874, ch. 32, § 50, p. 294.

2. [SPECIAL MEETING HOW CALLED.] § 2. Such special meeting shall be called by delivering personally, or depositing in the post office, at least thirty days before the time fixed for such meeting, a notice, properly addressed to each stockholder, signed by a majority of said directors, managers or trustees, stating the time, place and object of such meeting. A general notice of the time, place and object of such meeting shall also be published, for three successive weeks, in some newspaper printed in or nearest the county in which the principal business office of said corporation is located. [R. S. 1874, ch. 32, § 51, p. 294.

3. [STOCKHOLDERS MAY VOTE, HOW.] § 3. At any such meeting, stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him; and votes representing two-thirds of all the stock of the corporation shall be necessary for the adoption of the proposed change of name, place of business, number of directors, managers or trustees, amount of capital stock, or consolidation with some other company. [R. S. 1874, ch. 32, § 52, p. 294.

4. CERTIFICATE OF VOTE TO BE FILED.] § 4. If at any regular annual meeting, or at the time and place specified in said notice of a special meeting called for that purpose, said propositions, or any of them, be submitted to a vote, and if it shall appear that two-thirds of all the votes represented by the whole stock of such corporation are in favor of the propositions or of any of them, so submitted, a certificate thereof, verified by the affidavit of the president, and under seal of said corporation, shall be filed in the office of the secretary of state, and a like certificate filed for record in the office of the recorder of deeds of the county where the principal business office of such corporation is located. And upon the filing such certificate, the changes proposed and voted for at such meeting, as to name, place of business, increase or decrease of capital stock, or number of directors, managers or trustees, or consolidation with some other company, shall be and is hereby declared accomplished in accordance with said vote of the stockholders: *And, provided further*, that any corporation, other than corporations for manufacturing purposes, availing itself of or accepting the benefits of, or formed under this act, (except the mere change of name,) shall be subject to the general laws of this state now in force, or which may hereafter be passed, regulating corporations of like character. [R. S. 1874, ch. 32, § 53, p. 294.

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5. CHANGES OF ORGANIZATION TO BE PUBLISHED.] § 5. Such corporations shall, upon the filing of said certificate, cause to be published in some newspaper in, or nearest the county in which their principal office is located, a notice of such changes of organization, for three successive weeks. [R. S. 1874, ch. 32, § 54, p. 295.

6. [CORPORATIONS, NOT BEING STOCK COMPANIES, MAY AVAIL THEMSELVES OF THIS ACT.] § 6. Corporations, not being stock companies, may avail themselves of all the privileges and provisions of this act, by a majority vote of the members of such corporations who may be present at a meeting called for any of the purposes included in this act. [R. S. 1874, ch. 32, § 55, p. 295.

7. [CHANGES SHALL NOT AFFECT SUITS.] § 7. Such change of name, place of business, increase or decrease of capital stock, increase or decrease of number of directors, managers or trustees, or consolidation of one corporation with another, shall not affect suits pending, in which such corporation or corporations shall be parties; nor shall such changes affect causes of action, nor the rights of persons in any particular; nor shall suits brought against such corporation by its former name be abated for that cause. [R. S. 1874, ch. 32, § 56, p. 295.

8. [DESIRE TO CONSOLIDATE TO BE PUBLISHED.] § 8. Whenever any railroad corporation shall desire to consolidate with any other railroad corporation, by virtue of the provisions of this act, a notice, as provided by section two of this act, shall be given at least sixty days before the time fixed for such meeting, and a general notice, as provided by said section two, shall be published for nine successive weeks: *Provided*, that railroad corporations shall not consolidate their stock, property or franchises with any other railroad corporation owning a parallel or competing line. [R. S. 1874, ch. 32, § 57, p. 295.

AN ACT in relation to the consolidation of incorporated companies. In force May 9, 1867.

9. [CONSOLIDATED COMPANY LIABLE FOR DEBTS, ETC.] § 1. In all cases when any company or corporation, chartered or organized under the laws of this State, shall consolidate its property, stock or franchises with any other company or companies, such consolidated company shall be liable for all debts or liabilities of each company included in said consolidated company, existing or accrued prior to such consolidation; and actions may be brought and maintained and recovery had therefor, against such consolidated company. [R. S. 1874, ch. 32, § 59, p. 295.

AN ACT in regard to evidence and depositions in civil cases. In force July 1, 1872.

10. [PAPERS, ENTRIES AND RECORDS—HOW PROVED.] § 15. The papers, entries and records of any corporation or incorporated association may be proved by a copy thereof, certified under the hand of the secretary, clerk, cashier or other keeper of the same. If the corporation or incorporated association has a seal, the same shall be affixed to such certificate. [R. S. 1874, ch. 51, § 15, p. 490.

11. [FORM OF CERTIFICATE.] § 16. The certificate of any such clerk of a court, city, village, town, county, or secretary, clerk, cashier,

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or other keeper of any such papers, entries, records or ordinances, shall contain a statement that such person is the keeper of the same, and if there is no seal, shall so state. [R. S. 1874, ch. 51, § 16, p. 490.

AN ACT to revise the law in relation to the rate of interest. In force July 1, 1874.

12. [NOT TO PLEAD USURY.] § 11. No corporation shall hereafter interpose the defense of usury in action. [R. S. 1874, ch. 74, § 11, p. 615.

AN ACT In regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sold under execution or decree. In force July 1, 1872.

13. [STOCK SHARES SUBJECT TO EXECUTION.] § 52. The share or interest of a stockholder in any corporation may be taken on execution and sold as hereinafter provided. [R. S. 1874, ch. 77, §52 p. 628.

14. [COPY OF EXECUTION TO BE LEFT.] § 53. If the property has not been attached in the same suit, the officer shall leave an attested copy of the execution with the clerk, treasurer or cashier of the company, if there is any such officer, otherwise with any officer or person having the custody [of] the books and papers of the corporation; and the property shall be considered as seized on execution when the copy is so left, and shall be sold in like manner as goods and chattels. [R. S. 1874 ch. 77, §53 p. 628.

15. [SEIZURE AND SALE OF STOCK SHARES.] § 54. If the share is already attached in the same suit, the officer shall proceed in seizing and selling it on the execution, in the same manner as in selling goods and chattels. [R. S. 1874, ch. 77, §54, p. 628.

16. [NUMBER OF SHARES CERTIFIED.] § 55. The officer of the company who keeps a record or account of the shares or interest of the stockholders therein, shall, upon the exhibiting to him of the execution, be bound to give a certificate of the number of shares or amount of the interest held by the judgment debtor. If he refuses to do so, or if he wilfully gives a false certificate thereof, he shall be liable for double the amount of all damages occasioned by such refusal or false certificate, to be recovered in any proper action, unless the judgment is satisfied by the original defendant. [R. S. 1874, ch. 77, § 55 p. 628.

17. [PURCHASER ENTITLED TO CERTIFICATE—WHEN.] § 56. An attested copy of the execution and of the return thereof shall, within fifteen days after the sale, be left with the officer of the company whose duty it is to record transfers of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him upon paying the fees therefor and for recording the transfer. [R. S. 1874, ch. 77, § 56, p. 628.

18. [PURCHASER, WHEN ENTITLED TO DIVIDENDS.] § 57. If the shares or interest of the judgment debtor had been attached in the

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suit in which the execution issued, the purchaser shall be entitled to all the dividends which have accrued after the attachment. [R. S. 1874, ch. 77, § 57, p. 628.

AN ACT to amend section eight (8) of an act entitled "An act to revise the law in relation to the rate of interest," approved March 25, A. D. 1874.

19. [RATE OF INTEREST BETWEEN CITIZENS AND CORPORATIONS.] § 1. That section eight (8) of "An act to revise the law in relation to the rate of interest," approved March 25, A. D. 1874, be amended to read as follows:

"§ 8. When any written contract, whenever payable, shall have been or shall be made in this State, or between citizens or corporations of this State, or a citizen or corporation of this State and a citizen or corporation of any other state, territory or country, (or shall be secured by mortgage or trust deed on lands in this State) such contract may bear any rate of interest allowed by law, to be taken or contracted for by persons or corporations in this State, or which is or may be allowed by law on any contract for money due or owing in this State: *Provided, however*, that such rate of interest shall not exceed ten per cent. per annum. And if any such person or corporation shall contract or has contracted to receive a greater rate of interest or discount than ten per cent. upon any such contract, such person or corporation shall forfeit the whole of said interest so contracted to be received, and shall be entitled only to recover the principal sum due to such person or corporation." [Laws 1875, p. 85.

AN ACT authorizing the changing of directors of incorporated companies in certain cases. In force May 22, 1877.

20. MEETING OF STOCKHOLDERS FOR CHANGING.] § 1. Whenever the stockholders holding a majority of the stock of any corporation existing by virtue of any general or special law of this State, or any corporation hereafter organized by virtue of any law of this State, may desire to change the number of its directors, managers or trustees from an even number to an odd number, they may call a special meeting of the stockholders of such corporation for the purpose of submitting to a vote of the stockholders of such corporation the question of such change of directors, managers or trustees from an even to an odd number, *Provided*, That the number of directors, managers or trustees shall in no such case after such change be less than five nor more than eleven. [Laws 1877, § 1, p. 67.

21. [SPECIAL MEETINGS, HOW CALLED.] § 2. Such special meeting shall be called by the President upon the written application of the stockholders of such corporation owning a majority of the stock, by delivering personally, or depositing in the Post Office at least thirty days before the time fixed for such meeting, a notice properly addressed to each stockholder, signed by the President, stating the time, place and object of such meeting. A general notice of the time, place and object of such meeting shall also be published for three successive weeks in some newspaper printed in or nearest to the county in which the principal business office of said corporation is located. [Laws 1877, § 2, p. 67.

22. [MANNER OF VOTING.] § 3. At any such meeting stockholders may vote in person or by proxy, each stockholder being entitled to one vote for each share of stock held by him, and votes representing a majority of all the stock of the corporation shall be necessary

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for the purpose of changing the number of the directors, managers, or trustees from an even to an odd number. [Laws 1877, § 3, p. 67.

23. [CERTIFICATES OF VOTE FILED.] § 4. If at any regular annual meeting, or at the time and place specified in such notice of a special meeting called for that purpose, said proposition to change the number of directors, managers or trustees from an even to an odd number, be submitted to vote, and if it shall appear that a majority of all the votes represented by the whole stock of such corporation are in favor of such change, a certificate thereof verified by the affidavit of the President and under the seal of said corporation shall be filed in the office of the Secretary of State; and a like certificate filed for record in the office of the Recorder of Deeds of the county wherein the principal business office of such corporation is located; and upon the filing of such certificate the number of directors, managers or trustees shall be and is hereby declared to be changed from an even number to an odd number in accordance with such vote of the stockholders as aforesaid. [Laws 1877, § 4, p. 67.

AN ACT to revise the law in relation to quo warranto. In force July 1, 1874.

24. [WHEN WRIT MAY ISSUE—PETITION—INFORMATION—PARTIES.] § 1. That in case any person shall usurp, intrude into or unlawfully hold or execute any office or franchise, or any office in any corporation created by the authority of this state, or any public officer shall have done or suffered any act which, by the provisions of law, works a forfeiture of his office, or any association or number of persons shall act within this state as a corporation without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or forfeiture of its rights and privileges as a corporation, or exercises powers not conferred by law, or if any railroad company doing business in this state shall charge an extortionate rate for the transportation of any freight or passenger, or shall make any unjust discrimination in the rate of freight or passenger tariff over or upon its railroad, the attorney general or state's attorney of the proper county, either of his own accord or at the instance of any individual relator, may present a petition to any court of record of competent jurisdiction, or any judge thereof in vacation, for leave to file an information in the nature of a *quo warranto*, in the name of the People of the State of Illinois; and if such court or judge shall be satisfied that there is probable ground for the proceeding, the court or judge may grant the petition, and order the information to be filed and process to issue. When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information,

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the court or judge may give leave to join all of such persons in the same information, in order to try their respective rights to such office or franchise. [R. S. 1874, ch. 112, § 1, p. 787.

25. [JUDGMENT.] § 6. In case any person or corporation against whom any such information is filed is adjudged guilty, as charged in the information, the court may give judgment of ouster against such person or corporation from the office or franchise, and fine such person or corporation for usurping, intruding into, or unlawfully holding and executing such office or franchise, and also give judgment in favor of the relator for the costs of the prosecution: *Provided*, that instead of judgment of ouster from a franchise for an abuse thereof, unless the court is of the opinion that the public good demands such judgment, the court may fine the person or corporation found guilty in any sum not exceeding $25,000 for each offense. Whenever judgment is given for any defendant in such information, the person or corporation to whom judgment is given shall recover costs against the relator. [R. S. 1874, ch. 112, § 6, p. 788.

AN ACT to regulate the practice in Courts of Chancery. In force July 1, 1872.

26. [PRIVATE CORPORATIONS—DISCOVERY BY.] § 22. When a corporation, other than a municipal corporation, is defendant to a bill or petition praying discovery of any paper or matter alleged to be in the custody or within the knowledge of any officer or agent of the defendant, it shall not be necessary, for the purpose of procuring such discovery, to make such officer or agent a defendant, but the answer touching the paper or matter concerning which discovery is sought, shall be under the oath of such officer or agent the same as if he had been made defendant: *Provided*, no corporation shall be required to procure such answer under the oath of any person not under its control at the time when the bill is filed. [R. S. 1874, ch. 22, § 22, p. 201.]

AN ACT in regard to the assessment, levy and collection of the taxes of incorporated cities in this State, for years prior to the year 1877. In force July 1, 1877.

27. [TAXES—VOLUNTARY PAYMENTS.] § 3. All sums of money paid by any person or corporation, as taxes upon any such assessment or levy, or under any such law as specified in section one of this act shall be deemed to have been voluntary payments, but the persons or corporations paying said sums, when the same have been paid as taxes on personal property, and the real estate, in respect to which the same have been, or may be paid, when such payments are made as taxes on real estate, shall be credited with the amounts so paid on account of personal property taxes, as against any taxes which may be extended against the personal property of such persons or corpor-

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ations, and with the amounts paid as taxes on real property, as against any taxes which may be extended against such real property, for the year or years for which such payments may appear to have been made. If the amount of taxes extended against such persons, corporations or real property under the provisions of the act, shall not exceed in amount the payments to be credited as aforesaid, then nothing shall be collected of such persons, corporations, or property; but if the taxes so extended shall exceed such payments, then the excess only shall be collected. In case such payments shall exceed the taxes extended, as aforesaid, nothing herein contained shall be so construed as to give a right of action against any city, or make it liable for such excess, it being the intention of this act that such payments shall not be credited beyond the amount of the taxes to be extended as aforesaid. [Laws 1877, § 3, p. 57.

CHAPTER II.

EMINENT DOMAIN.

1. Compensation—Jury.
2. Manner of proceeding—Petition.
3. Petition presented in vacation.
4. Service of summons.
5. Causes heard in vacation.
6. Duty of the clerk of court—Jury.
7. Impanelling jury.
8. Oath of jury.
9. View of premises—Verdict.
10. Judgment—Payment.
11. Cross petition.
12. Appeal.
13. Bond—Use of premises.
14. Payment to county treasurer, etc.
15. Judgment entered.
16. Repeal.
17. Lands of state institutions not taken.

AN ACT to provide for the exercise of the right of eminent domain. In force July 1, 1872.

1. [COMPENSATION—JURY.] § 1. That private property shall not be taken or damaged for public use without just compensation; and that in all cases in which compensation is not made by the state in its corporate capacity, such compensation shall be ascertained by a jury, as hereinafter prescribed. [R. S. 1874, Ch. 47, Sec. 1 p. 475.

2. [MANNER OF PROCEEDING—PETITION.] § 2. That in all cases where the right to take private property for public use, without the owner's consent, or the right to construct or maintain any public road, railroad, plankroad, turnpike road, canal or other public work or improvement, or which may damage property not actually taken, has been heretofore or shall hereafter be conferred by general law or special charter upon any corporate or municipal authority, public body, officer or agent, person, commissioner or corporation, and the compensation to be paid for or in respect of the property sought to be appropriated or damaged for the purposes above mentioned cannot be agreed upon by the parties interested, or in case the owner of the property is incapable of consenting, or his name or residence is unknown, or he is a non-resident of the state, it shall be lawful for the party authorized to take or damage the property so required, or to construct, operate and maintain any public road, railroad, plankroad, turnpike road,

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canal or other public work or improvement, to apply to the judge of the circuit or county court, either in vacation or term time, where the said property or any part thereof is situate, by filing with the clerk a petition, setting forth, by reference, his or their authority in the premises, the purpose for which said property is sought to be taken or damaged, a description of the property, the names of all persons interested therein as owners or otherwise, as appearing of record, if known, or if not known stating that fact, and praying such judge to cause the compensation to be paid to the owner to be assessed. If the proceedings seek to affect the property of persons under guardianship, the guardians, or conservators of persons having conservators, shall be made parties defendant, and if of married women, their husbands shall also be made parties. Persons interested, whose names are unknown, may be made parties defendant by the description of the unknown owners; but in all such cases an affidavit shall be filed by or on behalf of the petitioner, setting forth that the names of such persons are unknown. In cases where the property is sought to be taken or damaged by the state for the purpose of establishing, operating or maintaining any state house or state charitable or other state institutions or improvements, the petition shall be signed by the governor or such other person as he shall direct, or as shall be provided by law. [R. S. 1874, ch. 47, Sec. 2 p. 475.

3. [Petition Presented in Vacation.] § 3. If such petition be presented to a judge in vacation, the judge shall note thereon the day of presentation, and shall also note thereon the day when he will hear the same, and shall order the issuance of summons to each resident defendant, and the publication of notice as to each non-resident defendant, and the clerk of the court shall at once issue the summons and give the notices accordingly. [R. S. 1874, ch. 47, § 3, p. 476.

4. [Service of Summons.] § 4. Service of such summons and publication of such notice shall be made as in cases in chancery. [R. S. 1874, ch. 47, § 4, p. 476.

5. [Causes Heard in Vacation.] § 5. Causes may be heard by such judges in vacation as well as in term time, but no cause shall be heard earlier than ten days after service upon defendant, or upon due publication against non-residents. Any number of separate parcels of property, situate in the same county, may be included in one petition, and the compensation for each shall be assessed separately, by the same or different juries, as the court or judge may direct. Amendments to the petition, or to any paper or record in the cause, may be permitted whenever necessary to a fair trial and final determination of the questions involved. Should it become necessary at any stage of the proceedings to bring a new party before the court or judge, the court or judge shall have the power to make such rule or order in relation thereto as may be deemed reasonable and proper; and shall also have power to make all necessary rules and orders for notice to parties of the pendency of the proceeding, and to issue all process necessary to the execution of orders and judgments as they may be entered. [R. S. 1874, ch. 47 § 5, p. 476.

6. [Duty of the Clerk of Court—Jury.] § 6. In cases fixed for hearing of petition in vacation, it shall be the duty of the clerk

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of the court in whose office the petition is filed, at the time of issuing summons or making publication, to write the names of each of sixty-four disinterested freeholders of the county on sixty-four slips of paper, and, in presence of two disinterested freeholders, cause to be selected from said sixty-four names twelve of said persons to serve as jurors—such selection to be made by lot and without choice or discrimination; and the said clerk shall thereupon issue *venire*, directed to the sheriff of his county, commanding him to summon the twelve persons so selected as jurors to appear at the court house in said county, at a time to be named in the *venire*. [R. S. 1874, ch. 47, § 6, p. 476.

7. [IMPANELING JURY.] § 7. The petitioner, and every party interested in the ascertaining of compensation, shall have the same right of challenge of jurors as in other civil cases in the circuit courts. If the panel be not full by reason of non-attendance, or be exhausted by challenges, the judge hearing such petition shall designate by name the necessary number of persons, of proper qualification, and the clerk or justice shall issue another *venire*, returnable instanter, and until the jury be full. [R. S. 1874, ch. 47, § 7, p. 476.

8. [OATH OF JURY.] § 8. When the jury shall have been so selected, the court shall cause the following oath to be administered to said jury:

You and each of you do solemnly swear that you will well and truly ascertain and report just compensation to the owner (and each owner) of the property which it is sought to take or damage in this case, and to each person therein interested according to the facts in the case, as the same may be made to appear by the evidence, and that you will truly report such compensation so ascertained: so help you God. [R. S. 1874, ch. 47, § 8, p. 476.

9. [VIEW OF PREMISES—VERDICT.] § 9. Said jury shall, at the request of either party, go upon the land sought to be taken or damaged, in person, and examine the same, and after hearing the proof offered make their report in writing, and the same shall be subject to amendment by the jury, under the direction of the court or the judge, as the case may be, so as to clearly set forth and show the compensation ascertained to each person thereto entitled, and the said verdict shall thereupon be recorded: *Provided*, that no benefits or advantages which may accrue to lands or property affected shall be set off against or deducted from such compensation, in any case. [R. S. 1874, ch. 47, § 9, p. 476.

10. [JUDGMENT PAYMENT.] § 10. The judge or court shall, upon such report, proceed to adjudge and make such order as to right and justice shall pertain, ordering that petitioner enter upon such property and the use of the same, upon payment of full compensation, as ascertained as aforesaid; and such order, with evidence of such payment, shall constitute complete justification of the taking of such property. [R. S. 1874, ch. 47, § 10, p. 477.

11. [CROSS PETITION.] § 11. Any person not made a party may become such by filing his cross petition, setting forth that he is the owner or has an interest in property, and which will be taken or damaged by the proposed work; and the rights of such last named petitioner shall thereupon be fully considered and determined. [R. S. 1874, ch. 47, § 11, p. 477.

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12. [APPEAL.] § 12. In all cases, in either the circuit or county court, or before a circuit or county judge, an appeal shall lie to the supreme court. [R. S. 1874, ch. 47, § 12, p. 477.

13. [BOND—USE OF PREMISES.] § 13. In cases in which compensation shall be ascertained as aforesaid, if the party in whose favor the same is ascertained shall appeal such proceeding, the petitioner shall, notwithstanding, have the right to enter upon the use of the property upon entering into bond, with sufficient surety, payable to the party interested in such compensation, conditioned for the payment of such compensation as may be finally adjudged in the case, and in case of appeal by petitioner, petitioner shall enter into like bond with approved surety. Said bonds shall be approved by the judge before whom such proceeding shall be had, and executed and filed within such time as shall be fixed by said judge. [R. S. 1874, ch. 47 § 13, p. 477.

14. [PAYMENT TO COUNTY TREASURER, ETC.] § 14. Payment of compensation adjudged may, in all cases, be made to the county treasurer, who shall, on demand, pay the same to the party thereto entitled, taking receipt therefor, or payment may be made to the party entitled, his, her or their conservator or guardian. [R. S. 1874, ch. 47, § 14, p. 477.

15. [JUDGMENT ENTERED.] § 15. The court or judge shall cause the verdict of the jury and the judgment of the court to be entered upon the records of said court. [R. S. 1874, ch. 47, § 15, p. 477.

16. [REPEAL.] § 16. All laws and parts of laws in conflict with the provisions of this act are hereby repealed: *Provided*, that this act shall not be construed to repeal any law or part of law upon the same subject passed by this general assembly; but in all such cases this act shall be construed as providing a cumulative remedy. [R. S. 1874, ch. 47, § 16, p. 477.

AN ACT for the further protection of the state institutions. In force March 9, 1867.

17. [LANDS OF STATE INSTITUTIONS NOT TAKEN.] § 1. No part of any land heretofore or hereafter conveyed to the state of Illinois, for the use of any benevolent institutions of the state (or to any such institutions), shall be entered upon, appropriated or used by any railroad or other company for railroad or other purposes, without the previous consent of the general assembly; and no court or other tribunal shall have or entertain jurisdiction of any proceeding instituted or to be instituted for the purpose of appropriating any such land for any of the purposes aforesaid, without such previous consent. [R. S. 1874, ch. 47, § 17, p. 477.

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CHAPTER III.

RAILROADS.

1. Number of persons for incorporation.
2. Sign and record articles.
3. Provisions of articles.
4. Powers of organized corporations.
5. Term of existence.
6. By-Laws.
7. Office in state.
8. Directors—Classification.
9. Meetings.
10. Annual and special statements.
11. Election of directors.
12. President and other officers.
13. Subscriptions to capital stock.
14. Stock—How transferred.
15. Increase of capital stock.
16. Liabilities on stock.
17. Liabilities of stockholder.
18. Title to real estate.
19. Materials for construction.
20. Powers of corporations.
21. Rolling stock.
22. Issue of stock and bonds.
23. Consolidation.
24. Annual report to Auditor.
25. Powers of General Assembly.
26. Cumulative voting.
27. Rates—When aid induced.
28. Commencement of construction.
29. Repeal of acts and parts of acts.
30. Power to borrow money.
31. How debts created.
32. Notice of meeting.
33. Record of mortgage.
34. Railroads contract with each other.
35. Connections.
36. Bridge crossings—Connections.
37. Power to purchase from lessors.
38. Union depot corporations.
39. Articles of association.
40. Certificate of incorporation.
41. Corporate powers defined.
42. Term and election of directors.
43. No discrimination.
44. Power to own water-craft.
45. Build and maintain depots.
46. Penalty.
47. Fence within six months.
48. Right of way clear of combustibles.
49. Animals on right of way, etc.
50. Neglect to build fence—Notice.
51. Adjoining owners build and recover.
52. Boards at crossings.
53. Bell and Whistle—Crossings.
54. Killing stock—Frightening team.
55. Starting train without signal.
56. Approaches at crossings.
57. Neglect to make crossings, etc.
58. When company neglects to construct, etc.
59. Company to pay expense and $100.
60. Drawbridge, railroad crossing, etc.
61. Penalty.
62. Not to obstruct highway.
63. Penalty.
64. Minors to keep off cars.
65. Railroad agent to make complaint.
66. Penalty.
67. Three preceding sections posted.
68. No freight cars behind passengers.
69. Must transport passengers and property.
70. Damages—Penalty.
71. Texas cattle.
72. Speed through cities.
73. Time of stop at stations.
74. Brakeman on passenger cars.
75. Brakeman on freight cars.
76. Damages—Penalty.
77. Checks for baggage.
78. Baggage-smashing.
79. Putting off passengers.
60. Badge.
81. Liability not limited.
82. Furnish axe, saw, etc.
83. Couplings.
84. Flagmen—Shelter.
85. Penalties.
86. Corporation defined.
87. Fire by locomotives.
88. Agent's certificate.
89. Without certificate cannot act.
90. Penalty for violating.
91. Must exhibit certificate.
92. Redemption of tickets.
93. Penalty for refusal to redeem.
94. Conductors—Police powers.
95. Ejection of passengers.
96. May arrest passengers.
97. Receive grain without distinction.
98. Erect and maintain scales.
99. Delivery—Penalty.
100. Right to change consignment.
101. Receiving on trade—Owners' rights.
102. Receipt and delivery at crossings.
103. Extortion.
104. Unjust discrimination.
105. Evidence.
106. Penalties.
107. Proceedings to recover fine.
108. Damages.
109. Duties of R. R. & W. H. Commissioners.
110. Schedules.
111. Evidence—Fines—Practice.
112. Corporation defined.
113. Fuel, ties, etc.
114. Sub-contractor, laborer, etc.
115. Notice of claim of lien.
116. Manner of motion.
117. Suit—Transcript.
118. Attorney's fee.
119. Failure of original contractor.
120. Limitations.
121. State taxes on valuation refunded.
122. Registration.
123. Value certified to Auditor.
124. Auditor estimate rates.
125. Custodian—Not liable—Collection.
126. Disbursement.
127. Road constructed—Compliances.
128. Representation in board of directors.
129. Increased valuation.
130. Entry of payment.
131. Bonds fully paid in 10 years.
132. Collector's bond—Fees.
133. New bonds for old.
134. Paid bonds delivered up.

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135. Fees—Salary.
136. Surplus funds.
137. Publication.
138. Bids received—Bonds cancelled.
139. How surplus funds invested.
140. Limits time of issuing bonds.
141. Title of act.
142. New bonds issued for old.
143. Old bonds cancelled.
144. Value taxable property certified.
145. Auditor to certify rate.
146. State Custodian—Collection, etc.
147. How money disbursed.
148. When registered bonds.
149. Entry of payment.
150. Fees—Collectors' bonds.
151. Powers of the city council.
152. Illinois Central—Seven per cent.
153. Illinois Central—Lands taxable.
154. Preamble.
155. Lands annually offered for sale.
156. Notice of sale.
157. How offered for sale.
158. Conveyance—Taxes.
159. To compel sale.
160. Commissions, tract list, etc.
161. Appointment, etc., of trustees.
162. Right of way Ill. Cent. R. R.
163. Land grant.
164. Lands reserved.
165. Lands how disposed of—Public highways.
166. Road completed in ten years.
167. Rates of transportation.
168. Statute applies to Alabama, etc.

AN ACT to provide for the incorporation of associations that may be organized for the purpose of constructing railways, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so organized. [In force March 1, 1872.]

1. [NUMBER OF PERSONS FOR INCORPORATION.] § 1. That any number of persons not less than five may become an incorporated company for the purpose of constructing and operating any railroad in this State, and that any and all railroads or transportation companies authorized to be incorporated and transact business in this State by virtue of this act, shall be and they are hereby authorized and empowered to purchase, own, operate and maintain any railroad sold or transferred under order or powers of sale or decree of, or sale under foreclosure of mortgage or deed of trust, and corporations heretofore organized under the provisions of the act hereby amended, their successors or assigns, shall have and possess all the powers and privileges conferred by this act. [Laws 1877, § 1, p. 163.

2. [SIGN AND RECORD ARTICLES.] § 2. Such persons shall organize by adopting and signing articles of incorporation, which shall be recorded in the office of the recorder of deeds in each county through or into which such railway is proposed to be run, and in the office of the secretary of state. [R. S. 1874, ch. 114, § 2, p. 799.

3. [PROVISIONS OF ARTICLES.] § 3. Such articles shall contain:
First—The name of the proposed corporation.
Second—The places from and to which it is intended to construct the proposed railway.
Third—The place at which shall be established and maintained the principal business office of such proposed corporation.
Fourth—The time of the commencement and the period of the continuance of such proposed corporation.
Fifth—The amount of capital stock of such corporation.
Sixth—The names and places of residence of the several persons forming the association for incorporation.
Seventh—The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.
Eighth—The number and amount of shares in the capital stock of such proposed corporation. [R. S. 1874, ch. 114, § 3, p. 799.

4. [POWERS OF ORGANIZED CORPORATIONS.] § 4. When the articles shall have been filed and recorded as aforesaid, the persons

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named as corporators therein shall thereupon become and be deemed a body corporate, and shall thereupon be authorized to proceed to carry into effect the objects set forth in such articles, in accordance with the provisions of this act. As such body corporate they shall have succession, and in their corporate name may sue and be sued, plead and be impleaded. The said corporation may have and use a common seal, which it may alter at pleasure; may declare the interests of its stockholders transferable; establish by-laws, and make all rules and regulations deemed necessary for the management of its affairs in accordance with law. A copy of any article of incorporation filed and recorded in pursuance with this act, or of the record thereof, and certified to be a copy by the Secretary of State, or his deputy, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated. [R. S. 1874, ch. 114, § 4, p. 799.

5. [TERM OF EXISTENCE.] § 5. No such corporation shall be formed to continue more than fifty years in the first instance, but such corporations may be renewed from time to time, in such manner as may be provided by law, for periods not longer than fifty years: *Provided*, that three-fourths of the votes cast at any regular election for that purpose shall be in favor of such renewal, and those desiring a renewal shall purchase the stock of those opposed thereto at its current value. [R. S. 1874, ch. 114, § 5, p. 800.

6. [BY-LAWS.] § 6. A copy of the by-laws of the corporation, duly certified, shall be recorded as provided for the recording of the articles of association in section two of this act; and all amendments and additions thereto, duly certified, shall also be recorded as herein provided, within ninety days after the adoption thereof. [R. S. 1874, ch. 114, § 6, p. 800.

7. [OFFICE IN STATE.] § 7. Every such corporation organized under the provisions of this act shall have and maintain a public office or place in this state for the transaction of its business, where transfers of all its stock shall be made, and in which shall be kept for public inspection, books, wherein shall be recorded the amount of capital stock subscribed and by whom, the names of the owners of its stock, the number of shares held by each person, and the number by which each of said shares is respectively designated, and the amounts owned by them respectively, the amount of stock paid in, and by whom, the transfers of said stock, the amount of its assets and liabilities, and the names and places of residence of all its officers. [R. S. 1874, ch. 114, § 7, p. 800.

8. [DIRECTORS—CLASSIFICATION.] § 8. All the corporate powers of every such corporation shall be vested in and be exercised by a board of directors, who shall be stockholders of the corporation, and shall be elected at the annual meetings of stockholders at the public office of such corporation within this state. The number of such directors, the manner of their election, and the mode of filling vacancies, shall be specified in the by-laws, and shall not be changed except at the annual meetings of the stockholders. The first board of directors shall classify themselves by lot in such manner that there shall be, as nearly as practicable, three directors in each class. Those belonging

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to the first class shall go out of office at the end of one year, those of the second class at the end of two years, and in like manner those of each class shall go out of office at the expiration of a number of years corresponding to the number of his class; and all vacancies occurring by reason of expiration of term shall be filled by election for a term of years equal to the number of classes. [R. S. 1874, ch. 114, § 8, p. 800.

9. [MEETINGS.] § 9. A meeting may be called at any time during the interval between such annual meetings, by the directors, or by the stockholders owning not less than one fourth of the stock, by giving thirty days' public notice of the time and place of such meeting in some newspaper published in each county through or into which the said railway shall run, or be intended to run, provided there be a newspaper published in each of the counties aforesaid; and if, at any such special meeting so called, a majority in value of the stockholders equal to two-thirds of the stock of such corporation, shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days, without transacting any business; and if, within said three days, two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned, and a new call may be given and notified as hereinbefore provided. [R. S. 1874, ch. 114, § 9, p. 800. See § 15.

10. [ANNUAL AND SPECIAL STATEMENTS.] § 10. At the regular annual meeting of the stockholders of any corporation organized under the provisions of this act, it shall be the duty of the president and directors to exhibit a full, distinct and accurate statement of the affairs of the said corporation; and at any meeting of the stockholders, or a majority of those present (in person or by proxy), may require similar statements from the president and directors, whose duty it shall be to furnish such statements when required in manner aforesaid; and at all general meetings of the stockholders, a majority in value of the stockholders of any such corporation may fix the rates of interest which shall be paid by the corporation for loans for the construction of such railway and its appendages, and the amount of such loans. At any special meeting, by a two-thirds vote in value of all the stock, such stockholders may remove any president, director or other officer of such corporation, and elect others instead of those so removed. All stockholders shall, at all reasonable hours, have access to and may examine all the books, records and papers of such corporation. [R. S. 1874, ch. 114, § 10, p. 801.

11. [ELECTION OF DIRECTORS.] § 11. In case it shall happen, at any time, that an election of directors shall not be made on the day designated by the by-laws of such corporation for that purpose, the corporation, for such cause, shall not be dissolved, if within ninety days thereafter the stockholders shall meet and hold an election for directors in such manner as shall be provided by the by-laws of such corporation: *Provided*, that it shall require a majority in value of the stock of such corporation to elect any member of such board of directors, and a majority of such board of directors shall be citizens and residents of this state. [R. S. 1874, ch. 114, § 11, p. 801.

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12. [PRESIDENT AND OTHER OFFICERS.] § 12. There shall be a president of such corporation, who shall be chosen by and from the board of directors, and such other subordinate officers as such corporation, by its by-laws, may designate, who may be elected or appointed, and shall perform such duties and be required to give such security for the faithful performance thereof as such corporation, by its by-laws, shall require, provided that it shall require a majority of the directors to elect or appoint any officer. [R. S. 1874, ch. 114, § 12, p. 801.

13. [SUBSCRIPTIONS TO CAPITAL STOCK.] § 13. The directors of such corporation may require the subscribers to the capital stock of such corporation to pay the amount by them respectively subscribed, in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution or order of such board of directors, the said board shall be authorized to declare such stock and all previous payments thereon forfeited for the use of the corporation; but the said board of directors shall not declare such stock so forfeited until they shall have caused a notice in writing to be served on such stockholder personally, or by depositing the same in a post office, properly directed to the post office address of such stockholder, or if he be dead, to his legal representatives, with necessary postage for its transmittal properly prepaid, stating therein that in accordance with such resolution, or order, he is requested to make such payment, at a time and place and in the manner to be specified in such notice, and that if he fails to make the same in the manner requested, his stock and all previous payments thereon will be forfeited for the use of such corporation; and thereafter such corporation, should default in payment be made, may sell the same and issue new certificates of stock therefor: *Provided*, that the notice as aforesaid shall be personally served or duly deposited, as above required, at least sixty days previous to the day on which such payment is required to be made. [R. S. 1874, ch. 114, § 13, p. 801.

14. [STOCK—HOW TRANSFERRED.] § 14. The stock of such corporation shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of such corporation. But no shares shall be transferable until all previous calls thereon shall have been paid; and it shall not be lawful for such corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them or any of them to use the same for other than the legitimate purposes of such corporation. [R. S. 1874, ch. 114, § 14, p. 801.

15. [INCREASE OF CAPITAL STOCK.] § 15. In case the capital stock of any such corporation shall be found insufficient for constructing and operating its road, such corporation may, with the concurrence of two-thirds in value of all its stock, increase its capital stock, from time to time, to any amount required for the purpose aforesaid. Such increase shall be sanctioned by a vote, in person or by proxy, of two-thirds in amount of all the stock of such corporation, at a meeting of such stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served personally or by depositing the same in a

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postoffice, directed to the postoffice address of each of said stockholders severally, with necessary postage for the transmittal of the same, prepaid, at least sixty days prior to the day appointed for such meeting, and by advertising the same in some newspaper published in each county through or into which the said road shall run or be intended to run (if any newspaper shall be published therein), at least sixty days prior to the day appointed for such meeting. Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock; and at such meeting the corporate stock of such corporation may be so increased, by a vote of two-thirds in amount of the corporate stock of such corporation, to an amount not exceeding the amount mentioned in the notices so given. Should the directors of any such corporation desire at any time to call a special meeting of the stockholders, for any other necessary purpose, the same may be done in the manner in this section provided, and if such meeting be attended by the owners of two-thirds in amount of the stock, in person or by proxy, any other necessary business of such corporation may be then transacted, except the altering, amending or adding to the by-laws of such corporation: *Provided*, such business shall have been specified in the notices given. And the proceedings of any such meeting shall be entered on the journal of the proceedings of such corporation. Every order or resolution increasing the capital stock of any such corporation shall be duly recorded as required in section two of this act. [R. S. 1874, ch. 114, § 15, p. 802.

16. [Liabilities on Stock.] § 15½. No person holding stock in any such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholders of such corporation; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly. [R. S. 1874, ch. 114, § 16, p. 802.

17. [Liabilities of Stockholder.] § 16. Each stockholder of any corporation formed under the provisions of this act, shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for any and all debts and liabilities of such corporation, until the whole amount of the capital stock of such corporation so held by him shall have been paid. [R. S. 1874, ch. 114, § 17, p. 802.

18. [Title to Real Estate.] § 17. If any such corporation shall be unable to agree with the owner for the purchase of any real estate required for the purposes of its incorporation, or the transaction of its business, or for its depots, station buildings, machine and repair shops, or for right of way or any other lawful purpose connected with or necessary to the building, operating or running of said road, such corporation may acquire such title in the manner that may be now or hereafter provided for by any law of eminent domain. [R. S. 1874, ch. 114, § 17, p. 802. See ch. 11, Eminent Domain.

19. [Materials for Construction.] § 18. Any such corporation may, by their agents and employes, enter upon and take from any

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land adjacent to its road, earth, gravel, stone, or other materials, except fuel and wood, necessary for the construction of such railway, paying, if the owner of such land and the said corporation can agree thereto, the value of such material taken and the amount of damage occasioned thereby to any such land or its appurtenances; and if such owner and corporation cannot agree, then the value of such material, and the damage occasioned to such real estate, may be ascertained, determined and paid in the manner that may now or hereafter be provided by any law of eminent domain, but the value of such materials, and the damages to such real estate, shall be ascertained, determined and paid for before such corporation can enter upon or take the same. [R. S. 1874, ch. 114, § 18, p. 802. See ch. 11, Eminent Domain.

20. [POWERS OF CORPORATIONS.] § 19. Every corporation formed under this act shall, in addition to the powers hereinbefore conferred, have power:

First—To cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route; and for such purpose, by its officers, agents or servants, may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damages which shall be occasioned thereby.

Second—To take and hold such voluntary grants of real estate and other property as shall be made to it, in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, not incompatible with the terms of the original grant.

Third—To purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway, and the stations and other accommodations necessary to accomplsh the object of its incorporation, and to convey the same when no longer required for the use of such railway.

Fourth—To lay out its road, not exceeding one hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necesary for the proper construction and security of the railway; and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation therefor in manner provided by law.

Fifth—To construct its railway across, along or upon any stream of water, watercourse, street, highway, plankroad, turnpike or canal, which the route of such railway shall intersect or touch; but such corporation shall restore the stream, watercourse, street, highway, plank road and turnpike thus intersected or touched, to its former state, or to such state as not unnecessarily to have impaired its usefulness, and keep such crossing in repair: *Provided*, that in no case shall any railroad company construct a road-bed without first constructing the necessary culverts or sluices, as the natural lay of the land requires for the necessary drainage thereof. Nothing in this act contained shall be construed to authorize the erection of any bridge, or any other obstruction, across or over any stream navigated by steamboats, at the place where any bridge or other obstructions may be proposed to be placed, so as to prevent the navigation of such stream;

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nor to authorize the construction of any railroad upon or across any street in any city, or incorporated town or village, without the assent of the corporation of such city, town or village: *Provided*, that in case of the constructing of said railway along highways, plank roads, turnpikes or canals, such railway shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same, or condemn the same under the provisions of any eminent domain law now or hereafter in force in this state. [See § 151.

Sixth—To cross, intersect, join and unite its railways with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company, with the necessary turnouts, sidings and switches, and other conveniences, in furtherance of the objects of its connections; and every corporation whose railway is or shall be hereafter intersected by any new railway, shall unite with the corporation owning such new railway in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in manner prescribed by law.

Seventh—To receive and convey persons and property on its railway, by the power and force of steam or animals, or by any mechanical power.

Eighth—To erect and maintain all necessary and convenient buildings and stations, fixtures and machinery, for the construction, accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of said railway.

Ninth—To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject, nevertheless, to the provisions of any law that may now or hereafter be enacted. [See § 25, 27.

Tenth—From time to time to borrow such sums of money as may be necessary for completing, finishing, improving or operating any such railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted by such corporation for the purposes aforesaid; but the concurrence of the holders of two-thirds in amount of the stock of such corporation, to be expressed in the manner and under all the conditions provided in the fifteenth section of this act, shall be necessary to the validity of any such mortgage; and the order or resolution for such mortgage shall be recorded as provided in the second section of this act; and the directors of such corporation shall be empowered, in pursuance to any such order or resolution, to confer on any holder of any bond for money so borrowed, as aforesaid, the right to convert the principal due or owing thereon into stock of such corporation, at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the by-laws of such corporation. [R. S. 1874, ch. 114, § 20, p. 803. See § 30-33.

21. [Rolling Stock.] § 20. The rolling stock and all other movable property belonging to any such corporation, shall be consid-

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ered personal property, and shall be liable to execution and sale, in the same manner as the personal property of individuals. [R. S. 1874, ch. 114, § 21, p. 804. See Const. art. 11, § 10.

22. [ISSUE OF STOCK AND BONDS.] § 21. No such corporation shall issue any stock or bonds, except for money, labor or property actually received and applied to the purposes for which such corporation was organized. All stock dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. [R. S. 1874, ch. 114, § 22, p. 804. See Const., art. 11, § 13.

23. [CONSOLIDATION.] § 22. No such corporation shall consolidate its capital stock with any other railway owning a parallel or competing line. And in no case shall any consolidation take place, except upon sixty days' notice thereof given, which notice shall be given in manner and form as prescribed in the fifteenth section of this act. [R. S 1874, ch. 114, § 23, p. 804. See Const., art. 11, § 11.

24. [ANNUAL REPORT TO AUDITOR.] § 23. The directors of every such corporation shall annually make a report, under oath, to the auditor of public accounts, and to such other officers as may be designated by law, of all its actings and doings, which, in part, shall include such matters relating to such corporations as may be now or hereafter prescribed by law. [R. S. 1874, ch. 114, § 24, p. 804. See Const., art. 11, § 9.

25. [POWERS OF GENERAL ASSEMBLY.] § 24. The general assembly shall have power to enact, from time to time, laws to prevent and correct abuses, and to prevent unjust discriminations and extortions in the rates of freight and passenger tariff, and to establish reasonable maximum rates of charges for the transportation of persons or property on any railway that may be constructed under the provisions of this act, and to enforce such laws by adequate penalties to the extent, if necessary for that purpose, of forfeiture of the property and franchises of any such corporation. [R. S. 1874, ch. 114, § 25, p. 804. See Const., art. 11, § 15.

26. [CUMULATIVE VOTING.] § 25. In all elections for directors or managers of such railway corporations every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors, multiplied by the number of his shares of stock, shall equal; or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner. [R. S. 1874, ch. 114, § 26, p. 805. See § 8, also Const., art. 11, § 3.

27. [RATES—WHEN AID INDUCED.] § 25½. In all cases when any corporation organized under this act to induce aid in its construction, either by donation or subscription to its capital stock, shall desire to fix the rates for any period of time for the transportation of passengers or freight, such corporation may adopt a resolution fixing such rates, and the time for which the same is to be fixed, and have the same recorded in the office of the recorder of deeds in the several counties

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through which said road is proposed to be run; and during the time for which they are fixed, said rates shall in no case be amended by said corporation or its successors: *Provided*, that said rates shall not exceed the rates allowed by law. [R. S. 1874, ch. 114, § 27, p. 805.

28. [COMMENCEMENT OF CONSTRUCTION.] § 26. If any railway corporation organized under this act shall not, within two years after its articles of association shall be filed and recorded as provided in the second section of this act, begin the construction of its road, and expend thereon twenty-five per cent. of the amount of its capital, within five years after the date of its organization, or shall not finish the road and put it in operation within ten years from the time of filing its articles of association, as aforesaid, its corporate existence and powers shall cease. [R. S. 1874, ch. 114, § 28, p. 805.

29. [REPEAL OF ACTS AND PARTS OF ACTS.] § 27. That an act entitled "An act to amend an act to provide for a general system of railroad incorporations," approved November 5, 1849, approved February 13, 1857, and also all of an act entitled "An act to provide for a general system of railroad incorporations," approved November 5, 1849, except the sections of the last named act, numbered 34, 35, 36, 37, 38, 39, 40, 41, 42 and 45, and all laws in conflict with the provisions of this act, be and the same are hereby repealed: *Provided, however*, that all general laws of this State in relation to railroad corporations, and the powers and duties thereof, so far as the same are not inconsistent with the provisions of this act, shall remain in force and be applicable to railroad incorporations organized under this act. The repeal of the acts and parts of acts mentioned in this section shall not be construed so as to affect any rights acquired thereunder; but all corporations formed or attempted to be formed under such acts or parts of acts, notwithstanding any defects or omissions in their articles of association, may, if they will adopt or have adopted this act, be entitled to proceed thereunder, and have all the benefits of this act; and all such corporations that have adopted or that will adopt this act, are hereby declared legal and valid corporations, within the provisions of this act, from the date of the filing of their respective articles of association. And the fixing of the termini by any such corporation shall have the same effect as if fixed by the general assembly: *Provided*, that all corporations to which this act shall apply shall be held liable for, and shall carry out and fulfill all contracts made by them, or for, or on their behalf, or of which they have received the benefit, whether such corporation, at the time of the making of such contract or contracts, was organized, or had attempted to organize, under the general laws of the State of Illinois, or not; whether said contract was for right of way, work and labor done, or materials furnished, or for the running of trains or carrying passengers or freight upon such road, or upon any other road in connection therewith. And if such corporation has or does take possession of or use such right of way, labor or material so furnished by other persons or corporations, it shall be evidence of its acceptance of such contract so entered into by such person or corporation with said persons or corporations for its benefit. And upon said corporation failing to pay said sum, as it ought equitably to pay for such right of way, labor or materials, or fail to carry out such con-

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tracts as aforesaid, so made with persons or corporations, it shall be held liable in an action at law or in chancery for the recovery of the value of said right of way, labor or materials, and for damages for non-fulfillment of such contract, in any court of competent jurisdiction in any county through which the road of such corporation may be located: *And, provided, further*, that this act shall not in any manner legalize the subscription of any township, county or city to the capital stock of any railroad company, nor authorize the issuing of any bonds by any township, city or county in payment of any subscription or donation. [R. S. 1874, ch. 114, § 29, p. 805.

AN ACT to enable railroad companies to borrow money and to mortgage their property and franchises therefor. In force July 1, 1873.

30. [POWER TO BORROW MONEY.] § 1. Every railroad company organized under any law or laws of this State, in force before the first day of March, A. D. 1872, is hereby empowered from time to time to borrow such sums of money as may be necessary for completing, furnishing, improving or operating any such railroad, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted by such corporation for the purposes aforesaid; but the concurrence of the holders of two-thirds in amount of the stock of such corporation, to be expressed in the manner hereinafter provided, shall be necessary to the validity of any such mortgage; and the order or resolution for such mortgage shall be recorded as provided in this act; and the directors of such corporation shall be empowered, in pursuance of any such order or resolution, to confer on any holder of any bond, for money so borrowed as aforesaid, the right to convert the principal due or owing thereon into stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulation as may be provided in the by-laws of such corporation. [R. S. 1874, ch. 114, § 30, p. 806.

31. [HOW DEBTS CREATED.] § 2. The concurrence of the holders of at least two-thirds in amount of the capital stock of such corporation in the creation of any such debt and the execution of any such mortgages, shall be made manifest by the votes cast by such stockholders in person or by proxy, on the passage of appropriate orders or resolutions at a meeting of the stockholders of such corporation, called by the directors thereof for such purpose. [R. S. 1874, ch. 114, § 31, p. 806.

32. [NOTICE OF MEETING.] § 3. The directors of such corporation shall give notice of such meeting by causing written or printed notices thereof to be either personally served upon or duly mailed (postage prepaid) to such stockholders whose names and address shall be known to said directors, such notice to be so mailed at least sixty days before the time fixed for such meeting. The said notices shall state the time and place of such meeting and the purpose thereof, as well as the amount of the proposed indebtedness. The said directors

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shall also cause like notices to be inserted in some newspaper published in each county through which said road shall run, (if any newspaper shall be published therein) at least sixty days prior to the day appointed for such meeting. [R. S. 1874, ch. 114, § 32, p. 806.

33. [RECORD OF MORTGAGE.] § 4. When such meeting shall be held, the resolution or order authorizing the creation of such indebtedness, and the execution of the mortgage to secure the same, together with the result of the vote thereon, shall be recorded in the office of the recorder of deeds of each county through which said road shall run, and shall also be recorded in the office of the secretary of state. [R. S. 1874, ch. 114, § 33, p. 806.

AN ACT to enable railroad companies to enter into operative contracts, and to borrow money. Approved February 12, 1865.

34. [RAILROADS CONTRACT WITH EACH OTHER.] § 1. All railroad companies incorporated or organized under, or which may be incorporated or organized under the authority of the laws of this state, shall have power to make such contracts and arrangements with each other, and with railroad corporations of other states, for leasing or running their roads, or any part thereof; and also to contract for and hold in fee simple or otherwise, lands or buildings in this or other states for depot purposes; and also to purchase and hold such personal property as shall be necessary and convenient for carrying into effect the object of this act. [R. S. 1874, ch. 114, § 34, p. 807.

35. [CONNECTIONS.] § 2. All railroad companies incorporated or organized, or which may be incorporated or organized as aforesaid, shall have the right of connecting with each other, and with the railroads of other states, on such terms as shall be mutually agreed upon by the companies interested in such connection. [R. S. 1874, ch. 114, § 35, p. 807.

AN ACT to facilitate travel and transportation. In force February 25, 1867.

36. [BRIDGE CROSSINGS—CONNECTIONS,] § 1. Railroads terminating, or to terminate at any point on any line of continuous railroad thoroughfare where there now is or shall be a railroad bridge for crossing of passengers and freight in cars over the same as part of such thoroughfare, shall make convenient connections of such railroads, by rail, with the rail of such bridge; and such bridge shall permit and cause such connections of the rail of the same with the rail of such railroads, so that by reason of such railroads and bridge there shall be uninterrupted communication over such railroads and bridge as public thoroughfares. But by such connections no corporate rights shall be impaired. [R. S. 1874, ch. 114, § 36, p. 807.

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AN ACT relating to lessees in this State of Railroads in adjoining States. In force July 1, 1875.

37. [POWER TO PURCHASE FROM LESSORS.] § 1. All railroad companies incorporated or organized, or which may be incorporated or organized under the laws of this state, or of this and any adjoining state, which now are, or at any time hereafter may be, in possession of and operating connecting railroads in states adjoining this state under lease in perpetuity, or for a period of not less than twenty years, shall have power to purchase the remaining interests, property and franchises of the lessors of such railroads situated in such adjoining states, on such terms and conditions as may be agreed upon by the parties, or their assigns, to such lease: *Provided*, that nothing in this act shall be so construed as to authorize any corporation acting by, or or organizing under the laws of any other state to purchase or otherwise become the owners of any railroad in this state. [Laws 1875, § 1, p. 96.

AN ACT authorizing the formation of Union Depots and stations for railroads in this State. In force July 1, 1875.

38. [UNION DEPOT CORPORATIONS.] § 1. That in order to facilitate the public convenience and safety in the transmission of goods and passengers from one railroad to another, and to prevent the unnecessary expense, inconvenience and loss attending the accumulation of a number of stations, any number of persons, not less than five, are hereby authorized to form themselves, or any two or more railroad companies may themselves form or join individuals in forming a corporation for the purpose of constructing, establishing and maintaining a union station for passenger or freight depots, or for both, in any city, town or place in this state, with the necessary offices and rooms convenient for the same, and appurtenances thereto, and for that purpose may make and sign articles, in which shall be stated the number of years the same is to continue, the city, town or place in which the same is to be located, the amount of the capital stock of said company, which shall not exceed three millions of dollars, the amount of each share of stock, the names and places of residence of its directors, which shall not be less than five nor exceed fifteen, who shall manage its affairs for the first year, and until others are chosen in their place, and shall also state the amount of stock taken by each subscriber. [Laws 1875, § 1, p. 97.

39. [ARTICLES OF ASSOCIATION.] § 2. Any association of persons or corporations, desiring to become incorporated under the provisions of this act, shall present their articles of association to the circuit court of the county in which such city or place is, or to the judge thereof in vacation, with the petition from such members for a certificate of incorporation under the provisions of this act, to which petition shall be added or appended a certificate of at least two railroad companies who have tracks leading into said city, town or place, stating its public utility, and that they expect to make arrangements for its use when it shall be constructed, signed by the presidents of their respective companies. [Laws 1875, § 2, p. 97.

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40. [CERTIFICATE OF INCORPORATION.] § 3. If the circuit court, or any judge thereof, in vacation, shall be satisfied that said certificate has been signed by such companies, then the said court or judge, upon filing the said petition, articles and certificate aforesaid, with the clerk of the court, shall grant to the said association a certificate of incorporation, which may be in the following form, to-wit:

WHEREAS, A. B. and C., etc. (stating the name), have filed in the office of the clerk of the circuit court their articles of association, in compliance with the provisions of an act entitled "An act authorizing the formation of union depots and stations for railroads in this state," approved (stating day of approval), with their petition of incorporation, under the name and style of: they are therefore hereby declared a body politic and corporate, by the name and style aforesaid, with all the powers, privileges and immunities granted in the act above named. By order of circuit court (or judge thereof); Attest, clerk of circuit court of county [of]

And thereupon, upon filing the same, or a certified copy thereof, in the office of the secretary of state, the said association, from the time of such filing, shall be a corporation under the laws of this State. [Laws 1875, § 3, p. 97.

41. [CORPORATE POWERS DEFINED.] § 4. Every corporation formed under this act, in addition to the general powers conferred by the laws of this state in relation to corporations, shall have power—

First—To take and hold such real estate as it may acquire either by conveyance to said corporation, or such as it may acquire under the provisions of this act by condemnation, and which shall be necessary for the transaction of its business.

Second—To take, occupy and condemn any land and real estate, or any interest therein, needed for the establishment of such union station or depot and necessary approaches thereto, and the same proceedings shall be had therefor as are now or may hereafter be provided by law, concerning the condemnation of lands for or by railroad companies in the state, so far as such laws are applicable to the purposes of this act; and when so condemned, the said land and any interest therein shall belong to such corporation for the purposes of this act: *Provided*, that nothing in this act shall be construed to authorize the condemnation as depot grounds of any railroad which is not of the same gauge of those joining in the petition: *Provided, further*, that none of the provisions of this act relating to the condemnation of land shall extend to any land or lands to which any municipal corporation has a title.

Third—With the consent of the corporate authorities of the city, town or place in which said station or depot is to be constructed, to have the right to lay the necessary track or tracks over, upon or under such street or roads of said city, town or place as may be necessary to make the necessary connections with railroads proposing to use said union depot, and may, with such consent, also construct such station or depot under, over or upon any such streets or roads: *Provided*, that all injury, if any, that may be occasioned to the property fronting on any streets or roads by the laying of any railroad tracks or the location of any depot upon such streets or roads, under the provisions of this act, shall be assessed and the assessment paid into the city treasury, to the use of the owners of the property so injured by the corporation

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so appropriating such streets or roads, before such corporation shall have the right to lay any track or locate any depot over, under or upon such streets or roads.

Fourth—From time to time to borrow such sums of money as may be necessary for the construction, completion and furnishing or repairing of such station or depot, and to issue or dispose of their bonds for such amounts, at such prices as they shall think proper, and to mortgage their corporate property and franchises for the purpose of securing the same.

Fifth—To open, from time to time, books of subscription to the remainder of the capital stock not taken by the subscribers to the articles of association. The general assembly shall have power to enact, from time to time, laws to prevent and correct abuses, and to prevent unjust discrimination and extortions in the management and prosecution of the business of any corporation formed under this act, and to enforce such laws by adequate penalties. [Laws of 1875, § 4 p. 98.

42. [Term and Election of Directors.] § 5. After the directors named in the articles of incorporation shall have served for one year, there shall be an annual election of directors, to be conducted in the manner prescribed in the constitution of this state. The directors so elected shall serve for the ensuing year, and notices of such election, appointing a time and place, shall be given by the directors as originally constituted for the first annual election, and thereafter by their successors in office, which notice shall be published not less than twenty days previous thereto, in some newspaper published in the English language, in the city, town or place in which said station or depot is located. [Laws 1875, § 5, p. 98.

43. [No Discrimination.] § 6. There shall be no discrimination against or in favor of any railroad company using or desiring to use the said union depot, but the terms, conditions and regulations adopted for the use of the same, shall be, so far as practicable, uniform, and apply alike to all railroads using or desiring to use said union depot. [Laws 1875, § 6, p. 99.

An Act to facilitate the carriage and transfer of passengers and property by railroad companies. In force July 1, 1877.

44. [Power to own Water Craft.] § 1. That all railroad companies incorporated under the laws of this State, having a terminus upon any navigable river bordering on this State, shall have power to own for their own use any watercraft necessary in carrying across such river any cars, property or passengers transported over their lines, or transported over any railroad terminating on the opposite side of such river to be transported over their lines. *Provided*, That no right shall exist under this act to condemn any real estate for landing for such water craft, or for any other purpose. And this act shall only apply to such railroad companies as own the landing for such water craft: *Provided*, also, that nothing in this act shall be held to impair or affect any right or privilege granted any ferry company incorpo-

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rated under the laws of this state; and that all the powers and rights herein granted said railroad companies shall be subject to whatever rights and privileges may have heretofore been granted to any ferry company in this State, and that nothing in this act shall prevent said railroad companies from being subject, in the use of such water craft, to all laws of the state regulating ferries now in force or hereafter to be in force: *And, provided, further*, That nothing in this act shall be held or construed to authorize any railroad or railway company doing business under any charter granted by this state, to consolidate with any railroad or railway company out of this state, so as to form one continuous line of railroad, or otherwise to alter, modify or repeal any provision of any such charter granted by this State; or to impair the rights of this state as now reserved to it in any such charter. [Laws 1877, § 1, p. 167.

AN ACT compelling railroad companies in this State to build and maintain depots for the comfort of passengers, and for the protection of shippers of freight at towns and villages on the line of their roads. In force July 1, 1877.

45. [BUILD AND MAINTAIN DEPOTS.] § 1. All railroad companies in this State carrying passengers or freight shall, and they are hereby required to build and maintain depots for the comfort of passengers and for the protection of shippers of freight, where such railroad companies are in the practice of receiving and delivering passengers and freight, at all towns and villages on the line of their roads having a population of five hundred or more. [Laws 1877, § 1, p. 165.

46. [PENALTY.] § 2. Any railroad company in this state failing to comply with the provisions of the preceding section after this act shall go into effect, and within ninety days after notice in writing of its failure to comply with the provisions of said section shall have been served upon any agent of said railroad by the authorized agent of any town or village aggrieved, shall pay for each and every day it shall neglect the sum of fifty dollars ($50.00) to be recovered in an action of debt before any justice of [the] peace, in the name of the People of the State of Illinois, in any town or village aggrieved. Said penalty to be paid to the said town or village for the school fund. [Laws 1877, § 2, p. 165.

AN ACT in relation to fencing and operating railroads. In force July 1, 1874.

47. [FENCE WITHIN SIX MONTHS.] § 1. That every railroad corporation shall, within six months after any part of its line is open for use, erect and thereafter maintain fences on both sides of its road, or so much thereof as is open for use, suitable and sufficient to prevent cattle, horses, sheep, hogs or other stock from getting on such railroad (except at the crossing of public roads and highways and within the limits of cities and incorporated towns and villages) with gates or bars at the farm crossings of such railroad, which farm cross-

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ings shall be constructed by such corporation when and where the same may become necessary, for the use of the proprietors of the lands adjoining such railroad; and shall also construct, where the same has not already been done, and thereafter maintain at all road crossings now existing, or hereafter established, cattle guards suitable and sufficient to prevent cattle, horses, sheep, hogs and other stock from getting on such railroad; and when such fences or cattle guards are not made as aforesaid, or when such fences or cattle guards are not kept in good repair, such railroad corporations shall be liable for all damages which may be done by the agents, engines or cars of such corporation to such cattle, horses, sheep, hogs or other stock thereon; but when such fences and cattle guards have been duly made and kept in good repair, such railroad corporation shall not be liable for any such damages unless negligently and wilfully done. [Laws 1877, § 1, p. 164.

48. [Right of Way Clear of Combustibles.] § 1½. It shall be the duty of all railroad corporations to keep their right of way clear from all dead grass, dry weeds or other dangerous combustible material, and for neglect shall be liable to the penalties named in section one. [R. S. 1874, ch. 114, § 38, p. 807.

49. [Animals on Right of Way, Etc.] § 2. If any person shall ride, lead or drive any horse or other animal upon the track or lands of such railroad corporation, and within such fences or guards (except to cross at farm or road crossings,) without the consent of the corporation; or shall tear down, or otherwise render insufficient to exclude stock, any part of such fence, guards, gates or bars—or shall leave the gates or bars at farm crossings open or down—or shall leave horses or other animals standing upon farm or road crossings, he shall be liable to a penalty of not less than ten nor more than one hundred dollars, to be recovered in an action of debt, before any court having competent jurisdiction thereof, in the name of such railroad corporation, and for the use of the school fund in the county, and shall pay all damages which shall be sustained thereby to the party aggrieved. [R. S. 1874, ch. 114, § 39, p. 808.

50. [Neglect to Build Fence—Notice.] § 3. Whenever a railroad corporation shall neglect or refuse to build or repair such fence, gates, bars or farm crossings, as provided in this act, the owner or occupant of the lands adjoining such railroad, or over or through which the railroad track is or may be laid, may give notice, in writing, to such corporation, or the lessees thereof, or the persons operating such railroad, to build such fence, gate, bars or farm crossings within thirty days (or repair said fence, gate, bars or farm crossings, as the case may be, within ten days) after the service of said notice. Such notice shall describe the lands on which said fence, gates, bars or farm crossings are required to be built or repaired. Service of such notice may be made by delivering the same to any station agent of said railroad corporation or the persons operating such railroad. [R. S. 1874, ch. 114, § 40, p. 808.

51. [Adjoining Owner Build and Recover.] § 4. If the party so notified shall refuse to build or repair such fence, gates, bars or farm crossings, in accordance with the provisions of this act, the owner or

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occupant of the land required to be fenced shall have the right to enter upon the land and track of said railroad company, and may build or repair such fence, gates, bars or farm crossings, as the case may be, and the person so building or repairing such fence, gates, bars or farm crossings, shall be entitled to double the value thereof from such corporation, or party actually occupying or using such railroad, to be recovered, with interest at one per cent, per month, as damages, from the time such fence, gates, bars or farm crossings were built or repaired, in any court of competent jurisdiction, together with costs, to be taxed by the court. [R. S. 1874, ch. 114, § 41, p 808.

52. [Boards at Crossing.] § 5. Every railroad corporation shall cause boards, well supported by posts or otherwise, to be placed and constantly maintained upon each public road or street, where the same is crossed by its railroad on the same level. Said boards shall be elevated so as not to obstruct the travel, and to be easily seen by travelers. On each side of said boards shall be painted in capital letters, of at least the size of nine inches each, the words "Railroad Crossing," or "Look out for the Cars." This section shall not apply to streets in cities or incorporated towns or villages, unless such railroad corporation shall be required to put up such boards by the corporate authorities of such cities, towns or villages: *Provided*, that when warning boards have already been erected, under existing laws, the maintenance of the same shall be a sufficient compliance with the requirements of this section. [R. S. 1874, ch. 114, § 42, p. 808.

53. [Bell and Whistle—Crossings.] § 6. Every railroad corporation shall cause a bell of at least thirty pounds weight, and a steam whistle placed and kept on each locomotive engine, and shall cause the same to be rung or whistled by the engineer or fireman, at the distance of at least eighty rods from the place where the railroad crosses or intersects any public highway, and shall be kept ringing or whistling until such highway is reached. [R. S. 1874, ch. 114, § 43, p. 808.

54. [Killing stock—frightening team.] § 6½. Any engineer, or person having charge of and running any railroad engine or locomotive, who shall willfully or maliciously kill, wound or disfigure any horse, cow, mule, hog, sheep or other useful animal, shall, upon conviction, be fined in the sum of not less than the value of the property so killed, wounded or disfigured, or confined in the county jail for a period of not less than ten days; and any such engineer or fireman, or other person, who shall wantonly or unnecessarily blow the engine whistle, so as to frighten any team, shall be liable to a fine of not less than $10 nor more than $50. [R. S. 1874, ch. 114, § 44, p. 809.

55. [Starting Train Without Signal.] § 7. If any engineer on any railroad shall start his train at any station, or within any city, incorporated town or village, without ringing the bell or sounding the whistle a reasonable time before starting, he shall forfeit a sum not less than $10 nor more than $100, to be recovered in an action of debt in the name of the People of the State of Illinois, and such corporation shall also forfeit a like sum, to be recovered in the same manner. [R. S. 1874, ch. 114, § 45, p. 809.

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56. [APPROACHES AT CROSSINGS.] § 8. Hereafter, at all of the railroad crossings of highways and streets in this state, the several railroad corporations in this state shall construct and maintain said crossings, and the approaches thereto, within their respective rights of way, so that at all times they shall be safe as to persons and property. [R. S., 1874, ch. 114, § 46, p. 809.

57. [NEGLECT TO MAKE, ETC., CROSSINGS—NOTICE.] § 9. Whenever any railroad corporation shall neglect to construct and maintain any of its crossings and approaches, as provided in section 8 of this act, it shall be the duty of the proper public authorities, having the charge of such highways or streets, to notify, in writing, the nearest agent of said railroad corporation of the condition of said crossing or approaches, aud direct the same to be constructed, altered or repaired in such manner as they shall deem necessary for the safety of persons and property. [R. S., 1874, ch. 114, § 47, p. 809.

58. [WHEN COMPANY NEGLECTS, AUTHORITIES TO CONSTRUCT, ETC.] § 10. If any railroad corporation of this state shall, after having been notified, as provided in section 9 of this act, neglect or refuse to construct, alter or repair such crossing or approaches within thirty days after such notice, then said public authorities shall forthwith cause such construction, alteration or repairs to be made. [R. S. 1874, ch. 114, § 48, p. 809.

59. [COMPANY TO PAY EXPENSES AND $100.] § 11. Said railroad corporation shall be holden for all necessary expenses incurred in making such construction, alteration and repairs, and in addition thereto shall be liable to a fine of $100 for such neglect to comply with the requirements of this act, which fine shall be enforced by the said public authorities, in the name of the People of the State of Illinois, before any court of competent jurisdiction in the county. Such fine, when collected, to be paid into the treasury of the authorities enforcing the fine. [R. S. 1874, ch. 114, § 59, p. 809.

60. [DRAW BRIDGE, RAILROAD CROSSING, ETC.] § 12. All trains run upon any railroad in this state which crosses any stream or harbor by swing or draw-bridge, or which intersects or crosses, or is intersected or crossed by any other railroad upon the same level, shall be brought to a full stop, at a distance not less than two hundred feet, nor more than eight hundred feet from the draw in every such bridge, or from the point of intersection or crossing of such road, and in plain sight of the same, before such draw, intersection or crossing is passed by any such train. [R. S. 1874, ch. 114, § 50, p. 809.

61. [PENALTY.] § 13. Every engineer violating the provisions of the preceding section shall, for each offense, forfeit $100, to be recovered in an action of debt, in the name of the People of the State of Illinois, or by any person who may sue for the same, and the corporation on whose road such offense is committed shall forfeit the sum of $200, to be recovered in like manner. [R. S. 1874, ch. 114, § 51, p. 809.

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62. [NOT TO OBSTRUCT HIGHWAY.] § 14. No railroad corporation shall obstruct any public highway by stopping any train upon, or by leaving any car or locomotive engine standing on its track, where the same intersects or crosses such public highways, except for the purpose of receiving or discharging passengers, or to receive the necessary fuel and water, and in no case to exceed ten minutes for each train, car or locomotive engine.

[STONING, ETC., TRAIN.] Any person who shall throw any stone or other hard substance at any railroad car, train or locomotive, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not more than $200, and shall stand committed to the county jail until such fine and costs shall be paid. [R. S. 1874, ch. 114, § 52, p. 810.

63. [PENALTY.] § 15. Every engineer or conductor violating the provisions of the preceding section shall, for each offense, forfeit the the sum of not less than $10 nor more than $100, to be recovered in an action of debt, in the name of the People of the State of Illinois, for the use of any person who may sue for the same, and the corporation on whose road the offense is committed shall be liable for the like sum. [R. S. 1874, ch. 114, § 53, p. 810.

64. [MINORS TO KEEP OFF CARS.] § 17. No person or minor shall climb, jump, step, stand upon, cling to, or in any way attach himself to any locomotive engine or car, either stationary or in motion, upon any part of the track of any railroad, unless in so doing he shall be acting in compliance with law, or by permission, under the lawful rules and regulations of the corporation then owning or managing such railroad. [R. S. 1874, ch. 114, § 54, p. 810.

65. [RAILROAD AGENT, ETC., TO MAKE COMPLAINT.] § 18. Whenever any officer, agent, or employee of any railroad corporation shall have any information that any person or minor has violated any of the provisions of the preceding section, and has thereby endangered himself, or caused reasonable alarm to others, said officer, agent, or employee shall, without unnecessary delay, make complaint of such offense against such person or minor before some justice of the peace. [R. S. 1874, ch. 114, § 55, p. 810.

66. [PENLLTY.] § 19. Any person or minor who shall violate any of the provisions of the seventeenth section of this act shall be punished by a fine not exceeding $25, to be recovered in an action of debt, in the name of the People of the State of Illinois, before a justice of the peace, or, upon conviction, by imprisonment in the county jail, or other place of confinement, for a period not exceeding twelve hours. [R. S. 1874, ch. 114, § 56, p. 810.

67. [THREE PRECEDING SECTIONS POSTED.] § 20. The several railroad corporations in this state shall, without unnecessary delay, cause printed copies of the three preceding sections of this act to be kept posted in conspicuous places at all their stations along their lines of railroad in this state. Every railroad corporation that shall neglect to post, and keep posted, such notices as required by this section, shall, for each offense, forfeit the sum of $50, to be recovered in an ac-

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tion of debt, in the name of the People of the State of Illinois. [R. S. 1874. ch 114, § 57, p. 810.

68. [No Freight, etc., Cars Behind Passenger.] § 21. In no train shall freight, merchandise or lumber cars be run in the rear of passenger cars, and if such cars, or any of them, shall be so run, the officer or agent who so directed, or knowingly suffered such arrangement to be made, shall each be deemed guilty of a misdemeanor, and punished accordingly. [R. S. 1874, ch. 114, § 58, p. 810.

69. [Must Furnish Cars and Transport Passengers and Property.] § 22. Every railroad corporation in this state shall furnish, start and run cars for the transportation of such passengers and property as shall, within a reasonable time previous thereto, be ready, or be offered for transportation, at the several stations on its railroad, and at the junctions of other railroads, and at such stopping places as may be established for receiving and discharging way passengers and freight; and shall take, receive, transport and discharge such passengers and property at, from and to such stations, junctions and places, on and from all trains advertised to stop at the same for passengers and freight respectively, upon the due payment, or tender of payment, of tolls, freight or fare, legally authorized therefor, if payment shall be demanded. [R. S. 1874, ch. 114, § 59, p. 810.

70. [Damages—Penalty.] § 23. In case of the refusal of such corporation, or its agents, to take, receive and transport any person or property, or to deliver the same within a reasonable time, at their regular or appointed time and place, and according to the provisions of the preceding section of this act, such corporation shall pay to the party aggrieved treble the amount of damages sustained thereby, with costs of suit, and in addition thereto, said corporation shall forfeit a sum of not less than $25, nor more than $1,000 for each offense, to be recovered in an action of debt, in the name of The People of the State of Illinois—the treble damages for the use of the party aggrieved, and the forfeiture for the use of the school fund of the county in which the offense is committed. [R. S. 1874, ch. 114, § 60, p. 811.

71. [Texas Cattle.] § 23½. In any suit brought for violation of "An act concerning the transportation of Texas or Cherokee cattle, approved April 16, 1869," the consignor of any live stock, the bringing of which into this state shall constitute the offense created by this act, if he be a citizen of this state, and if not the consignee, if he shall have knowledge of and consent to such consignment, of any such live stock, shall be made a joint defendant with any railroad or transportation company which may be sued for the offense aforesaid, and the said consignor, or consignee, shall suffer jointly any penalty passed upon any such railroad or transportation company for any violation of the act aforesaid. Any action brought for a violation of the act aforesaid, must be commenced within the eighteen months next succeeding the bringing of the cattle into this state, on account of which the action may be brought. Any railroad company who shall transport any Texas, Cherokee or diseased cattle in violation of the aforesaid act, without knowing them to be such, may recover from any consignor or consignee any sum of money it may be compelled

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by the judgment of any court to pay for the transportation of such cattle, and the record of the judgment against the said company shall, in any suit against any such consignor or consignee, be evidence of the amount of damages to be recovered, with interest from the time of payment: *Provided*, that nothing in this section shall be construed to affect any right existing or suit pending. [R. S. 1874, ch. 114, § 61, p. 811.

72. [SPEED THROUGH CITIES.] § 1. Whenever any railroad corporation shall by itself or agents, run any train, locomotive engine, or car, at a greater rate of speed in or through the incorporated limits of any city, town or village, than is permitted by any ordinance of such city, town or village, such corporation shall be liable to the person aggrieved for all damages done the person or property by such train, locomotive engine or car; and the same shall be presumed to have been done by the negligence of said corporation, or their agents; and in addition to such penalties as may be provided by such city, town or village, the person aggrieved by the violation of any of the provisions of this section, shall have an action against such corporation, so violating any of the provisions to recover a penalty of not less than one hundred dollars, nor more than two hundred dollars, to be recovered in any court of competent jurisdiction; said action to be an action of debt, in the name of the People of the State of Illinois for the use of the person aggrieved; but the court or jury trying the case may reduce said penalty to any sum, not less however than fifty dollars, where the offense committed by such violation may appear not to be malicious or willful; *Provided*, that no such ordinance shall limit the rate of speed, in case of passenger trains to less than ten miles per hour, nor in any other case to less than six miles per hour. [Laws 1877, § 1, p. 165.

73. [TIME OF STOP AT STATIONS.] § 25. Every railroad corporation shall cause its passenger trains to stop, upon the arrival at each station advertised by such corporation as a place for receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety. [R. S. 1874, ch. 114, § 63, p. 811.

74. [BRAKEMAN ON PASSENGER CARS.] § 26. No railroad corporation shall run or permit to be run on its railroad any train of cars moved by steam power, for the transportation of passengers, unless there is placed upon the train one trusty and skillful brakeman for every two cars in the train, or unless the brakes are efficiently operated by power applied from the locomotive. [R. S. 1874, ch. 114, § 64, p. 812.

75. [BRAKEMAN ON FREIGHT CARS.] § 27. No railroad corporation shall run or permit to be run upon its railroad any train of cars, for the transportation of merchandise or other freight, without a good and sufficient brake attached to the rear or hindmost car of the train, and a trusty and skillful brakeman stationed upon said car, unless the brakes are efficiently operated by power applied from the locomotive. [R. S. 1874, ch. 114, § 65, p. 812.

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76. [DAMAGES—PENALTY.] § 28. If any railroad corporation shall violate any of the provisions of the three preceding sections, it shall be liable to the person aggrieved for all damages done to person or property by reason thereof, with costs of suit; and in addition thereto, said corporation shall forfeit the sum of not less than $100 nor more than $500, for each offense, to be recovered in action of debt, in the name of the people of the State of Illinois, for the use of any person aggrieved, before any court of competent jurisdiction. [R. S. 1874, ch. 114, § 66, p. 812.

77. [CHECKS FOR BAGGAGE.] § 29. Every railroad corporation, when requested, shall give checks or receipts to passengers for their ordinary baggage, when delivered for transportation on any passenger train, which baggage shall, in no case, exceed one hundred pounds in weight for each passenger, and shall deliver such baggage to any passenger upon the surrender of such checks or receipts. Any such corporation wilfully refusing to comply with the requirements of this section, shall pay a fine of not less than $10 nor more than $100, which may be recovered before any court of competent jurisdiction, in an action of debt, in the name of the people of the State of Illinois, for the use of the person aggrieved: *Provided*, that no passenger shall be entitled to receive checks or receipts for any baggage unless he shall have paid, or tendered the lawful rate of fare for his transportation to the proper agent for such corporation. [R. S. 1874, ch. 114, § 67, p. 812.

78. [BAGGAGE SMASHING.] § 30. Any person employed by a railroad corporation in this state, who shall wilfully, carelessly or negligently break, injure or destroy any baggage, shall be liable for the amount of damage to the owner thereof and may be arrested, and, on conviction before a justice of the peace, be fined in any sum not exceeding $200, and held in custody or confined in the county jail until such fine shall be paid: *Provided*, that the remedy hereby given against such employee shall not lessen the liability of such corporation. [R. S. 1874, ch. 114, § 68, p. 812.

79. [PUTTING OFF PASSENGERS.] § 31. If any passenger on any railroad car or train shall refuse, upon reasonable demand, to pay his lawful fare—or shall, upon such car or train, use abusive, threatening, vulgar, obscene, or profane language thereon—or shall so conduct himself as to make his presence offensive or unsafe to passengers thereon, it shall be lawful for the conductor of the train to remove, or cause to be removed, such passenger from the train at any regular station; but if such conductor shall use, cause or permit to be used unreasonable force or violence, he shall be liable for all damages to the person injured thereby: *Provided*, that the recovery and satisfaction of damages, under the provisions of this section, shall not lessen the liability of, or the amount of the damages that such corporation may be liable to, for such acts. [R. S. 1874, ch. 114, § 69, p. 812.

80. [BADGE.] § 32. Every conductor, baggage-master, brakeman, or other servant of any railroad corporation in this state, employed on a passenger train, or about the passenger depots, shall wear upon his hat or cap a badge which shall indicate his office. No conductor with-

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out such badge shall demand, or be entitled to receive from any passenger, any fare, toll or ticket, or exercise any of the powers of his office; and neither shall any other of said officers or servants, without such badge, be authorized to meddle or interfere with any passenger, his baggage or property. [R. S. 1874, ch. 14, § 70, p. 812.

81. [LIABILITY NOT LIMITED.] § 33. That whenever any property is received by any railroad corporation to be transported from one place to another, within or without the state, it shall not be lawful for such corporation to limit its common law liability safely to deliver such property at the place to which the same is to be transported, by any stipulation or limitation expressed in the receipt given for the safe delivery of such property. [R. S. 1874, ch. 114, § 71, p. 813.

82. [FURNISH AX, SAW, ETC.] § 34. That every railroad corporation shall furnish each car used for the transportation of passengers with one woodman's ax, one hand saw, one sledge hammer and two leather buckets; said articles to be kept in good repair, ready for instant use, and in some convenient place in such car, easy of access in case of collision or other accident. [R. S. 1874, ch. 114, § 72, p. 813.

83. [COUPLINGS.] 34½. It shall be the duty of all railroad corporations operating any railroad in this state, to provide such of their passenger cars as are used in trains with some suitable automatic coupling, or other coupling which will secure personal safety, within one year from the time this law goes into effect, and any company refusing or neglecting to provide such automatic coupling, or other couplings which will secure personal safety, for each passenger car so used in trains, shall be liable to a fine of not less than $25 nor more than $50. [R. S. 1874, ch. 114, § 73, p. 813.

84. [FLAGMEN—SHELTER.] § 35. In all cases where the public authorities having charge of any street over which there shall be a railroad crossing, shall notify any agent of the corporation owning, using or operating such railroad, that a flagman is necessary at such crossing, it shall be the duty of such railroad company, within sixty days thereafter, to place and retain a flagman at such crossing, who shall perform the duty usually required of flagmen; and such flagman is hereby empowered to stop any and all persons from crossing a railroad track when, in his opinion, there is danger from approaching trains or locomotive engines; and any railroad company refusing or neglecting to place flagmen, as required by this section, shall be liable to a fine of $100 per day for every day they shall neglect or refuse to do so; and it is hereby made the duty of such public authorities having charge of such street, to enforce the payment of such fine, by suit, in the name of the town or municipal corporation wherein such crossing shall be situate, before any court of competent jurisdiction in the county, and the prosecuting attorney shall attend to the prosecution of all suits as directed by said public authorities. All the moneys collected under the provisions of this act shall be paid into the treasury of the town or municipal corporation in whose name such suits shall have been brought: *Provided*, that when any railroad company is required to keep a flagman at a crossing, it shall have the right to erect and maintain in the highway or street crossed, a suitable house for the

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shelter of such flagman, the same to be so located as to create the least obstruction to the use of such street or highway, and afford the best view of the railroad track in each direction from such crossing. [R. S. 1874, ch. 114, § 74, p. 813.

85. [PENALTIES.] § 36. If any railroad corporation, or any of its agents, servants or employees, shall violate any of the provisions of this act, such corporation, agent, servant or employee shall, severally, unless otherwise herein provided, be liable to a fine of not less than $10, nor more than $200, to be recovered in action of debt, in the name of the people of the State of Illinois, for the use of any person aggrieved, before any court of competent jurisdiction. [R. S. 1874, ch. 114, § 75, p. 813.

86. [CORPORATION DEFINED.] § 37. The word "corporation," as used in this act, shall be construed to include all companies, lessees, contractors, persons, or associations of persons owning, operating or using any railroads in this State. [R. S. 1874, ch. 114, § 76, p. 813.

AN ACT relating to fires caused by locomotives. In force March 29, 1869.

87. [FIRES BY LOCOMOTIVES.] § 1. That in all actions against any person or incorporated company for the recovery of damages on account of any injury to any property, whether real or personal, occasioned by fire communicated by any locomotive engine while upon or passing along any railroad in this state, the fact that such fire was so communicated shall be taken as full *prima facie* evidence to charge with negligence the corporation, or person or persons who shall, at the time of such injury by fire, be in the use and occupation of such railroad, either as owners, lessees or mortgagees, and also those who shall at such time have the care and management of such engine; and it shall not, in any case, be considered as negligence on the part of the owner or occupant of the property injured, that he has used the same in the manner, or permitted the same to be used or remain in the condition it would have been used or remained had no railroad passed through or near the property so injured, except in cases of injury to personal property which shall be at the time upon the property occupied by such railroad. This act shall not apply to injuries already committed. [R. S. 1874, ch. 114, § 78, p. 814.

AN ACT to prevent frauds upon travellers and owner or owners of any railroad, steamboat or other conveyance for the transportation of passengers. In force July 1, 1875.

88. [AGENTS' CERTIFICATE.] § 1. That it shall be the duty of the owner or owners of any railroad or steamboat for the transportation of passengers to provide each agent, who may be authorized to sell tickets, or other certificates entitling the holder to travel upon any railroad or steamboat, with a certificate setting forth the authority of such agent to make such sales; which certificate shall be duly attested by the corporate seal of the owner of such railroad or steamboat. [Laws 1875, § 1, p. 81.

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89. [WITHOUT CERTIFICATE CANNOT ACT.] § 2. That it shall not be lawful for any person not possessed of such authority, so evidenced, to sell, barter or transfer, for any consideration whatever, the whole or any part of any ticket or tickets, passes, or other evidences of the holder's title to travel on any railroad or steamboat, whether the same be situated, operated or owned within or without the limits of this state. [Laws 1875, § 2, p. 82.

90. [PENALTY FOR VIOLATING.] § 3. That any person or persons violating the provisions of the second section of this act shall be deemed guilty of misdemeanor, and shall be liable to be punished by a fine not exceeding five hundred dollars, and by imprisonment not exceeding one year, or either, or both, in the discretion of the court in which such person or persons shall be convicted. [Laws 1875, § 3, p. 82.

91. [MUST EXHIBIT CERTIFICATE.] § 4. That it shall be the duty of every agent who shall be authorized to sell tickets, or parts of tickets, or other evidences of the holder's title to travel, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him, the certificate of his authority thus to sell, and to keep said certificate posted in a conspicuous place in his office for the information of travelers. [Laws 1875, § 4, p. 82.

92. [REDEMPTION OF TICKETS.] § 5. That it shall be the duty of the owner or owners of railroad or steamboat, by their agents or managers, to provide for the redemption of the whole, or any parts or coupons of any ticket or tickets, as they may have sold, as the purchaser, for any reason, has not used, and does not desire to use, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the proportion of said ticket was actually used; and the sale by any person of the unused portion of any ticket otherwise than by the presentation of the same for redemption, as provided for in this section, shall be deemed to be a violation of the provisions of this act, and shall be punished as is hereinbefore provided: *Provided*, that this act shall not prohibit any person who has purchased a ticket from any agent authorized by this act, with the *bona fide* intention of traveling upon the same, from selling any part of the same to any other person. [Laws 1875, § 5, p. 82.

93. [PENALTY FOR REFUSING TO REDEEM.] § 6. Any railroad or steamboat company that shall, by any of its ticket agents in this state, refuse to redeem any of its tickets or parts of tickets as prescribed in section five of this act, shall pay a fine of five hundred dollars for each offense, to the People of the State of Illinois, and it shall be unlawful for said company, subsequent to such refusal, to sell any ticket or tickets in this state until such fine is paid. [Laws 1875, § 6, p. 82.

AN ACT for the protection of passengers on railroads. In force July 1, 1877.

94. [CONDUCTOR'S POLICE POWERS.] § 1. That the conductors of all railroad trains carrying passengers within this state shall be invested with police powers while on duty on their respective trains. [Laws 1877, § 1, p. 166.

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95. [EJECTION OF PASSENGERS.] § 2. When any passenger shall be guilty of disorderly conduct, or use any obscene language, to the annoyance and vexation of passengers, or play any games of cards or chance for money or other valuable thing, upon any railroad train, the conductor of such train is hereby authorized to stop his train at any place where such offense has been committed and eject such passenger from the train, using only such force as may be necessary to accomplish such removal, and may command the assistance of the employes of the railroad company, or any of the passengers, to assist in such removal; but before doing so he shall tender to such passenger such proportion of the fare he has paid as the distance he then is from the place to which he has paid his fare bears to the whole distance for which he has paid his fare. [Laws 1877, § 2, p. 166.

96. [MAY ARREST PASSENGER.] § 3. When any passenger shall be guilty of any crime or misdemeanor upon any passenger train, the conductor or employes of such train may arrest such passenger and take him before any justice of the peace in the county in which such crime or misdemeanor is committed, and file an affidavit before such justice of the peace, charging him with such crime or misdemeanor. [Laws 1877, § 3, p. 166.

AN ACT regulating the receiving, transportation and delivery of grain by railroad corporations, and defining the duties of such corporations with respect thereto. In force July 1, 1871.

97. [RECEIVE GRAIN WITHOUT DISTINCTION.] § 1. That every railroad corporation, chartered by or organized under the laws of this state or doing business within the limits of the same, when desired by any person wishing to ship any grain over its road, shall receive and transport such grain in bulk, within a reasonable time, and load the same either upon its track, at its depot, or at any warehouse adjoining its track or side track, without distinction, discrimination or favor between one shipper and another, and without distinction or discrimination as to the manner in which such grain is offered to it for transportation, or as to the person, warehouse or place to whom or to which it may be consigned. And at the time such grain is received by it for transportation, such corporation shall carefully and correctly weigh the same, and issue to the shipper thereof a receipt or bill of lading for such grain, in which shall be stated the true and correct weight; and such corporation shall weigh out and deliver to such shipper, his consignee or other person entitled to receive the same, at the place of delivery, the full amount of such grain, without any deduction for leakage, shrinkage or other loss in the quantity of the same. In default of such delivery, the corporation so failing to deliver the full amount of such grain shall pay to the person entitled thereto the full market value of any such grain not delivered at the time and place when and where the same should have been delivered. If any such corporation shall, upon the receipt by it of any grain for transportation, neglect or refuse to weigh and receipt for the same, as aforesaid, the sworn statement of the shipper, or his agent having personal knowledge of the amount of grain so shipped, shall be taken

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as true, as to the amount so shipped; and in case of the neglect or refusal of any such corporation, upon the delivery by them of any grain, to weigh the same, as aforesaid, the sworn statement of the person to whom the same was delivered, or his agent having personal knowledge of the weight thereof, shall be taken as true, as to the amount delivered. And if, by such statements, it shall appear that such corporation has failed to deliver the amount so shown to be shipped, such corporation shall be liable for the shortage, and shall pay to the person entitled thereto the full market value of such shortage, at the time and place when and where the same should have been delivered. [R. S. 1874, ch. 114, § 80, p. 814.

98. [ERECT AND MAINTAIN SCALES.] § 2. At all stations or places from which the shipment of grain by the road of such corporation shall have amounted during the previous year to fifty thousand (50,000) bushels or more, such corporation shall, when required so to do by the persons who are the shippers of the major part of said fifty thousand bushels of grain, erect and keep in good condition for use, and use in weighing grain to be shipped over its road, true and correct scales, of proper structure and capacity for the weighing of grain by car load in their cars after the same shall have been loaded. Such corporation shall carefully and correctly weigh each car upon which grain shall be shipped from such place or station, both before and after the same is loaded, and ascertain and receipt for the true amount of grain so shipped. If any such corporation shall neglect or refuse to erect and keep in use such scales when required to do so as aforesaid, or shall neglect or refuse to weigh in the manner aforesaid any grain shipped in bulk from any station or place, the sworn statement of the shipper, or his agent, having personal knowledge of the amount of grain shipped, shall be taken as true as to the amount so shipped. In case any railroad corporation shall neglect or refuse to comply with any of the requirements of section first, second and fifth of this act, it shall, in addition to the penalties therein provided, forfeit and pay for every such offense and for each and every day such refusal or neglect is continued the sum of one hundred dollars ($100), to be recovered in an action of debt before any justice of the peace, in the name of the People of the State of Illinois, such penalty or forfeiture to be paid to the county in which the suit is brought, and shall also be required to pay all costs of prosecution, including such reasonable attorney's fees as may be assessed by the justice before whom the case may be tried. [Laws 1877, § 2, p. 168.

99. [DELIVERY—PENALTY.] § 3. Every railroad corporation which shall receive any grain in bulk for transportation to any place within the state, shall transport and deliver the same to any consignee, elevator, warehouse, or place to whom or to which it may be consigned or directed: *Provided*, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section, shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages re-

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sult from any depreciation in the value of such property by such neglect or refusal to deliver such grain as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered, and costs of suit, including such reasonable attorney's fees as shall be taxed by the court. And in case of any second or later refusal of such railroad corporation to comply with the requirements of this section, such corporation shall be by the court, in the action on which such failure or refusal shall be found, adjudged to pay, for the use of the people of this state, a sum of not less than one thousand dollars, nor more than five thousand dollars, for each and every such failure or refusal, and this may be a part of the judgment of the court in any second or later proceeding against such corporation. In case any railroad corporation shall be found guilty of having violated, failed, or omitted to observe and comply with the requirements of this section, or any part thereof, three or more times, it shall be lawful for any person interested to apply to a court of chancery, and obtain the appointment of a receiver to take charge of and manage such railroad corporation until all damages, penalties, costs and expenses adjudged against such corporation for any and every violation shall, together with interest, be fully satisfied. [R. S. 1874, ch. 114, § 82, p. 815.

100. [Right to Change Consignment.] § 4. All consignments of grain to any elevator or public warehouse shall be held to be temporary, and subject to change by the consignee or consignor at any time previous to the actual unloading of such property from the cars in which it is transported. Notice of any change in consignment may be served by the consignee on any agent of the railroad corporation having the property in possession who may be in charge of the business of such corporation at the point where such property is to be delivered; and if, after such notice, and while the same remains uncanceled, such property is delivered in any way different from such altered or changed consignment, such railroad corporation shall, at the election of the consignee or person entitled to control such property, be deemed to have illegally appropriated such property to its own use, and shall be liable to pay the owner or consignee of such property double the value of the property so appropriated; and no extra charge shall be permitted by the corporation having the custody of such property, in consequence of such change of consignment. [R. S. 1874, ch. 114, § 83, p. 816.

101. [Receiving on Track—Owners' Rights.] § 5. Any consignee or person entitled to receive the delivery of grain transported in bulk by any railroad, shall have twenty-four hours, free of expense, after actual notice of arrival by the corporation to the consignee, in which to remove the same from the cars of said railroad corporation, if he shall desire to receive it from the cars on the track; which twenty-four hours shall be held to embrace such time as the car containing such property is placed and kept by such corporation in a convenient and proper place for unloading. And it shall not be held to have been placed in a proper place for unloading, unless it can be reached by the consignee, or persons entitled to receive it, with teams or other suitable means for removing the property from the car, and reasonably convenient to the depot of such railroad corporation at

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which it is accustomed to receive and unload merchandise consigned to that station or place. Nothing herein contained, however, shall be held to authorize the changing of any consignment of grain, except as to the place at which it is to be delivered or unloaded, nor shall such change of consignment, in any degree, affect the ownership or control of property in any other way. [R. S. 1874, ch. 114, § 84, p. 816.

102. [RECEIPT AND DELIVERY AT CROSSINGS.] § 6. Every railroad corporation organized or doing business under the laws of this state, or authority thereof, shall receive and deliver all grain consigned to its care for transportation at the crossings and junctions of all other railroads, canals, and navigable rivers. Any violation of this section shall render any such railroad corporation subject to the same penalty as contained in section three of this act. [R. S. 1874, ch. 114, § 85, p. 816.

AN ACT to prevent extortion and unjust discrimination in the rates charged for the transportation of passengers and freights on railroads in this state, and to punish the same, and prescribe a mode of procedure and rules of evidence in relation thereto, and to repeal an act entitled "An act to prevent unjust discrimination and extortion in the rates to be charged by the different railroads in this state for the transportation of freights on said roads," approved April 7, 1871, in force July 1, 1873.

103. [EXTORTIONS.] § 1. If any railroad corporation, organized or doing business in this state under any act of incorporation, or general law of this state, now in force or which may hereafter be enacted, or any railroad corporation organized or which may hereafter be organized under the laws of any other state, and doing business in this state, shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation, for the transportation of passengers or freight, of any description, or for the use and transportation of any railroad car upon its track, or any of the branches thereof, or upon any railroad within this state which it has the right, license or permission to use, operate or control, the same shall be deemed guilty of extortion, and upon conviction thereof shall be dealt with as hereinafter provided. [R. S. 1874, ch. 114, § 86, p. 816.

104. [UNJUST DISCRIMINATION.] § 2. If any such railroad corporation aforesaid shall make any unjust discrimination in its rates or charges of toll, or compensation, for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car upon its said road, or upon any of the branches thereof, or upon any railroads connected therewith, which it has the right, license or permission to operate, control or use, within this state, the same shall be deemed guilty of having violated the provisions of this act, and upon conviction thereof shall be dealt with as hereinafter provided. [R. S. 1874, ch. 114, § 87, p. 817.

105 [EVIDENCE.] § 3. If any such railroad corporation shall charge, collect or receive, for the transportation of any passenger, or freight of any description, upon its railroad, for any distance, within this state, the same, or a greater amount of toll or compensation than is at the same time charged, collected or received for the transporta-

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tion, in the same direction, of any passenger, or like quantity of freight of the same class, over a greater distance of the same railroad; or if it shall charge, collect or receive, at any point upon its railroad, a higher rate of toll or compensation for receiving, handling or delivering freight of the same class and quantity, then it shall, at the same time, charge, collect or receive at any other point upon the same railroad; or if it shall charge, collect or receive for the transportation of any passenger, or freight of any description, over its railroad, a greater amount as toll or compensation than shall, at the same time, be charged, collected or received by it for the transportation of any passenger, or like quantity of freight of the same class, being transported in the same direction, over any portion of the same railroad, of equal distance; or if it shall charge, collect or receive from any person or persons, a higher or greater amount of toll or compensation than it shall, at the same time, charge, collect, or receive from any other person or persons for receiving, handling or delivering freight of the same class and like quantity, at the same point upon its railroad; or if it shall charge, collect, or receive from any person or persons, for the transportation of any freight upon its railroad, a higher or greater rate of toll or compensation than it shall, at the same time, charge, collect or receive from any other person or persons, for the transportation of the like quantity of freight of the same class, being transported from the same point, in the same direction, over equal distances of the same railroad; or if it shall charge, collect or receive from any person or persons, for the use and transportation of any railroad car or cars upon its railroad, for any distance, the same or a greater amount of toll or compensation than is at the same time charged, collected or received from any other person or persons, for the use and transportation of any railroad car of the same class or number, for a like purpose, being transported in the same direction, over a greater distance of the same railroad; or if it shall charge, collect or receive from any person or persons, for the use and transportation of any railroad car or cars upon its railroad, a higher or greater rate of toll or compensation than it shall, at the same time, charge, collect or receive from any other person or persons, for the use and transportation of any railroad car or cars of the same class or number, for a like purpose, being transported from the same point, in the same direction, over an equal distance of the same railroad; all such discriminating rates, charges, collections or receipts, whether made directly, or by means of any rebate, drawback, or other shift or evasion, shall be deemed and taken, against such railroad corporation, as *prima facie* evidence of the unjust discriminations prohibited by the provisions of this act; and it shall not be deemed a sufficient excuse or justification of such discriminations on the part of such railroad corporation, that the railway station or point at which it shall charge, collect, or receive the same or less rates of toll or compensation, for the transportation of such passenger or freight, or for the use and transportation of such railroad car the greater distance, than for the shorter distance, is a railway station or point at which there exists competition with any other railroad or means of transportation. This section shall not be construed so as to exclude other evidence tending to show any unjust discrimination in freight and passenger rates. The provisions of this section shall ex-

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tend and apply to any railroad, the branches thereof, and any road or roads which any railroad corporation has the right, license or permission to use, operate or control wholly or in part, within this state: *Provided, however*, that nothing herein contained shall be so construed as to prevent railroad corporations from issuing commutation, excursion or thousand-mile tickets, as the same are now issued by such corporations. [R. S. 1874, ch. 114, § 88, p. 817.

106. [PENALTIES.] § 4. Any such railroad corporation guilty of extortion, or of making any unjust discrimination as to passenger or freight rates, or the rates for the use and transportation of railroad cars, or in receiving, handling or delivering freights, shall, upon conviction thereof, be fined in any sum not less than one thousand dollars ($1,000), nor more than five thousand dollars ($5,000), for the first offense; and for the second offense not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000), and for the third offense not less than ten thousand dollars ($10,000) nor more than twenty thousand dollars ($20,000); and for every subsequent offense and conviction thereof, shall be liable to a fine of twenty-five thousand dollars ($25,000): *Provided*, that in all cases under this act either party shall have the right of trial by jury. [R. S. 1874, ch. 114 § 89, p. 818.

107. [PROCEEDINGS TO RECOVER FINE.] § 5. The fines hereinbefore provided for may be recovered in an action of debt, in the name of the people of the state of Illinois, and there may be several counts joined in the same declaration as to extortion and unjust discrimination, and as to passenger and freight rates, and rates for the use and transportation of railroad cars, and for receiving, handling and delivering freights. If, upon the trial of any cause instituted under this act, the jury shall find for the people, they shall assess and return with their verdict the amount of the fine to be imposed upon the defendant, at any sum not less than one thousand dollars ($1,000) nor more than five thousand dollars ($5,000), and the court shall render judgment accordingly; and if the jury shall find for the people, and that the defendant has been once before convicted of a violation of the provisions of this act, they shall return such finding with their verdict, and shall assess and return with their verdict the amount of the fine to be imposed upon the defendant, at any sum not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000), and the court shall render judgment accordingly; and if the jury shall find for the people, and that the defendant has been twice before convicted of a violation of the provisions of this act, with respect to extortion or unjust discrimination, they shall return such finding with their verdict, and shall assess and return with their verdict the amount of the fine to be imposed upon the defendant, at any sum not less than ten thousand dollars ($10,000) nor more than twenty thousand dollars ($20,000); and in like manner, for every subsequent offense and conviction, such defendant shall be liable to a fine of twenty-five thousand dollars ($25,000): *Provided*, that in all cases under the provisions of this act, a preponderance of evidence in favor of the people shall be sufficient to authorize a verdict and judgment for the people. [R. S. 1874, ch. 114, § 90, p. 818.

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108. [DAMAGES.] § 6. If any such railroad corporation shall, in violation of any of the provisions of this act, ask, demand, charge or receive of any person or corporation any extortionate charge or charges for the transportation of any passengers, goods, merchandise or property, or for receiving, handling or delivering freights, or shall make any unjust discrimination against any person or corporation in its charges therefor, the person or corporation so offended against may, for each offense, recover of such railroad corporation, in any form of action, three times the amount of the damages sustained by the party aggrieved, together with cost of suit and a reasonable attorney's fee, to be fixed by the court where the same is heard, on appeal or otherwise, and taxed as a part of the costs of the case. [R. S. 1874, ch. 114, § 91, p. 818.

109. [DUTIES OF RAILROAD AND WAREHOUSE COMMISSIONERS.] § 7. It shall be the duty of the railroad and warehouse commissioners to personally investigate and ascertain whether the provisions of this act are violated by any railroad corporation in this state, and to visit the various stations on the line of each railroad for that purpose, as often as practicable; and whenever the facts, in any manner ascertained by said commissioners, shall in their judgment warrant such prosecution, it shall be the duty of said commissioners to immediately cause suits to be commenced and prosecuted against any railroad corporation which may violate the provisions of this act. Such suits and prosecutions may be instituted in any county in this state through or into which the line of the railroad corporation sued for violating this act may extend. And such railroad and warehouse commissioners are hereby authorized, when the facts of the case presented to them shall, in their judgment, warrant the commencement of such action, to employ counsel to assist the attorney general in conducting such suit on behalf of the state. No such suits commenced by said commissioners shall be dismissed, except said railroad and warehouse commissioners and the attorney general shall consent thereto. [R. S. 1874, ch. 114, § 92, p. 819.

110. [SCHEDULES.] § 8. The railroad and warehouse commissioners are hereby directed to make, for each of the railroad corporations doing business in this state, as soon as practicable, a schedule of reasonable maximum rates of charges for the transportation of passengers and freights and cars on each of said railroads; and said schedule shall, in all suits brought against any such railroad corporations, wherein is in any way involved the charges of any such railroad corporation for the transportation of any passenger or freight or cars, or unjust discrimination in relation thereto, be deemed and taken in all courts of this state as *prima facie* evidence that the rates therein fixed are reasonable maximum rates of charges for the transportation of passengers and freights and cars upon the railroads for which said schedules may have been respectively prepared. Said commissioners shall from time to time, and as often as circumstances may require, change and revise said schedules. When any schedule shall have been made or revised, as aforesaid, it shall be the duty of said commissioners to cause publication thereof to be made for three successive weeks, in some public newspaper published in the city of Springfield, in this state. All such schedules, heretofore or hereafter made, purporting to be printed and published as aforesaid, shall be received and held in

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all such suits as *prima facie* the schedules of said commissioners, without further proof than the production of the schedule desired to be used as evidence, with a certificate of the railroad and warehouse commissioners that the same is a true copy of the schedule prepared by them for the railroad company or corporation therein named, and that the same has been published as required by law, stating the name of the paper in which the same was published, together with the date of such publication. [R. S. 1874, ch. 114, § 93, p. 819.

111. [EVIDENCE—FINES—PRACTICE.] § 10. In all cases under the provisions of this act, the rules of evidence shall be the same as in other civil actions, except as hereinbefore otherwise provided. All fines recovered under the provisions of this act shall be paid into the county treasury of the county in which the suit is tried, by the person collecting the same, in the manner now provided by law, to be used for county purposes. The remedies hereby given shall be regarded as cumulative to the remedies now given by law against railroad corporations, and this act shall not be construed as repealing any statute giving such remedies. Suits commenced under the provisions of this act shall have precedence over all other business, except criminal business. [R. S. 1874, ch. 114, § 94, p. 819.

112. [CORPORATION DEFINED.] § 11. The term "railroad corporation," contained in this act, shall be deemed and taken to mean all corporations, companies or individuals now owning or operating, or which may hereafter own or operate any railroad, in whole or in part, in this state; and the provisions of this act shall apply to all persons, firms and companies, and to all associations of persons, whether incorporated or otherwise, that shall do business as common carriers upon any of the lines of railways in this state (street railways excepted), the same as to railroad corporations hereinbefore mentioned. [R. S. 1874, ch. 114, § 95, p. 819.

AN ACT to protect contractors, sub-contractors and laborers in their claims against railroad companies, or corporations, contractors or sub-contractors. In force July 1, 1872.

113. [FUEL, TIES, ETC.] § 1. That all persons who may have furnished, or who shall hereafter furnish to any railroad corporation now existing, or hereafter to be organized under the laws of this state, any fuel, ties, material, supplies, or any other article or thing necessary for the construction, maintenance, operation or repair of such roads, by contract with said corporation, or who shall have done and performed, or shall hereafter do and perform any work or labor for such construction, maintenance, operation or repair by like contract, shall be entitled to be paid for the same as part of the current expenses of said road; and in order to secure the same, shall have a lien upon all the property, real, personal and mixed, of said railroad corporation as against such railroad, and as against all mortgages or other liens which shall accrue after the commencement of the delivery of said articles, or the commencement of said work or labor: *Provided*, suit shall be commenced within six months after such contractor or laborer shall

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have completed his contract with said railroad corporation, or after such labor shall have been performed or material furnished. [R. S. 1874, ch. 82, § 51, p. 671.

114. [SUB-CONTRACTOR, LABORER, ETC.] § 2. Every person who shall hereafter, as sub-contractor, material man, or laborer, furnish to any contractor with any such railroad corporation any fuel, ties, materials, supplies, or any other article or thing, or who shall do and perform any work or labor for such contractor in conformity with any terms of any contract, express or implied, which such contractor may have made with any such railroad corporation, shall have a lien upon all the property, real, personal and mixed, of said railroad corporation: *Provided*, such sub-contractor, material man or laborer shall have complied with the provisions of this act; but the aggregate of all liens hereby authorized shall not, in any case, exceed the price agreed upon in the original contract to be paid by such corporation to the original contractor: *And, provided, further*, that no such lien shall take priority over any existing lien. [R. S. 1874, ch. 82, § 52, p. 671.

115. [NOTICE OF CLAIM OF LIEN.] § 3. The person performing such labor, or furnishing such material, shall cause a notice, in writing, to be served on the president or secretary of such railroad corporation, substantially as follows, viz:

To....., president, (or secretary, as the case may be) of the.....: You are herby notified that I am (or have been) employed by.....as a laborer (or have furnished supplies, as the case may be) on or for the....., and that I shall hold all the property of said railroad (or railway, as the case may be) company to secure my pay.

If there shall be a contract in writing between the original contractor and sub-contractor, material man or laborer, a copy of such contract, if the same can be obtained, shall be served with such notice and attached thereto, which notice shall be served at any time within twenty days after the completion of such sub-contract, or such labor: *Provided*, that no lien shall attach in favor of any person performing such labor or furnishing material until such notice shall have been served as above, or filed for record as hereinafter provided. [R. S. 1874, ch. 82, § 53. p. 672.

116. [MANNER OF NOTICE.] § 4. If neither the president or the secretary of such railroad corporation shall reside or can be found in the county in which the sub-contract was made, or labor performed, the laborer, or person furnishing labor or material, shall file said notice in the office of the clerk of the circuit court; and the clerk of the circuit court shall file and keep a record of said notice, and cause a copy of the same to be mailed to the president or secretary of said company, for which he shall receive the sum of twenty-five cents, and said clerk shall keep a list of the names of the persons so claiming lien, and the names of the corporations against which such liens are claimed. [R. S. 1874, ch. 82, § 54, p. 672.

117. [SUIT, TRANSCRIPT.] § 5. If the money due the person having given notice as aforesaid, shall not be paid within ten days after the money shall become due and payable, then such person may commence suit therefor, in any court having jurisdiction of the amount claimed to be due, against the corporation with which the original contract was made; or he may commence suit, as aforesaid, against

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such railroad, corporation and original contractor jointly, and execution to issue as in other cases. If execution, issued on judgment obtained before a justice of the peace, shall be returned not satisfied, a transcript of such judgment may be taken to the circuit court, and spread upon the records thereof, and shall have all the force and effect of judgments obtained in the circuit court, and execution issued thereon as in other cases. [R. S. 1874, ch. 82, § 55, p. 672.

118. [ATTORNEY'S FEES.] § 6. Whenever any suit, so brought, shall be determined in favor of the plaintiff, the court shall allow, if before a justice, five dollars, if in a court of record, twenty dollars, attorney's fees to be taxed as costs. [R. S. 1874, ch. 82, § 56, p. 672.

119. [FAILURE OF ORIGINAL CONTRACTOR.] § 7. Should the original contractor in any case fail to complete his contract, any person entitled to a lien, as aforesaid, may file his petition in any court of record, in any county through which the road may be constructed, against the railroad corporation and the contractors, setting forth the nature of his claim, and the amount due as near as may be, [and] the fact that the contractor has failed to complete his contract. The clerk of said court shall thereupon cause a notice to be published for four successive weeks in a newspaper printed in the county, setting forth that said petition has been filed, and the time when the writ issued on the same shall have been made returnable, and all persons entitled to liens under this act may enter their appearance and interplead in said cause, and have their claims adjudicated; and it shall be the duty of the court, in case the petitioner or claimants, or either of them, establish their claims, to enter a decree against the said corporation and original contractor, for the amount to which the persons so establishing their claims are respectively entitled, and such decrees shall have the same force and effect as decrees in other cases. [R. S. 1874, ch. 82, § 57, p. 672.

120. [LIMITATION.] § 8. The lien hereby created shall continue for three months from the time of the performance of the sub-contract, or doing of the work or furnishing the material as aforesaid, except when suit shall be commenced by petition as aforesaid, and in such cases all liens shall be barred by decree entered in such cause. [R. S. 1874, ch. 82, § 58, p. 672.

ACT OF 1869.*

AN ACT to fund and provide for paying the railroad debts of counties, townships, cities and towns. In force April 16, 1869.

121. [STATE TAXES ON VALUATION ABOVE 1868 REFUNDED.] § 1. That whenever any county, township, incorporated city or town shall have created a debt which still remains unpaid, or shall

*The decision of the supreme court in Ramsey *v.* Hœger abrogates so much of this act as provides that the state tax on the increased valuation over 1868, and on the property of railroads aided, shall be placed to the credit of the local aid bonds, and applied by the state treasurer in the payment of said bonds. It does not affect the validity of the bonds, the right to register them, nor the levy and collection of the interest on registered bonds by state authority.

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create a debt under the provisions of any law of this state, to aid in the construction of any railway or railways that shall be completed within ten years from and after the passage of this act, whose line shall run near to, into or through said county, township, city or town, it shall be lawful for the state treasurer, and he is hereby required, immediately upon receiving the revenue each year, to place to the credit of such county, township, city or town so having incurred such indebtedness, in the state treasury, annually, for and during the term of ten years, all the state taxes collected and paid into the state treasury on the increased valuation of the taxable property of said county, township, city or town, as shown by the annual assessment rolls, over and above the amount of the assessment roll of the year 1868, excepting the state school tax and the two mill tax provided for by the constitution of this state for the payment of the state debt. And whenever any county, township, city or town shall have created a debt, as aforesaid, it shall also be lawful for the collector of taxes, and he is hereby required, annually, for and during the term of ten years, to pay into the state treasury all the taxes collected for any purpose whatever, on the assessment of the railroad or railroads for whose aid the said debt was incurred, including the road-bed and superstructure, and all fixtures and appurtenances thereof, the locomotives, cars, machinery and machine shops, depots and all other property, real and personal, of said railway company, within such county, township, city or town; and immediately upon receiving the same, the state treasurer shall place to the credit of such county, township, city or town, in the state treasury, the whole amount so received, except the state school tax and the two mill tax provided by the constitution of this state for the payment of the state debt; and it shall be the duty of said collector of taxes to furnish the state auditor a separate and detailed account of the amount of taxes collected from said railway or railways, at the time of his annual settlement with the state auditor. And the state treasurer shall give to said collector separate receipts for the respective amounts paid into the state treasury to the credit of said county; and said receipts shall be taken and received by the county court, or other legal authorities, as vouchers for the amount collected on account of the county and local assessments on said railroad property, in the annual settlement with such collector; and the several amounts of money in this section provided and ordered to be placed to the credit of such county, township, city or town, shall be applied by the state treasurer to the payment of the bonded railroad debt of such county, township, city or town, as hereinafter provided. [R. S. 1874, ch. 113, § 11. p. 791.

122. [Registration.] § 2. And the county clerk, or other proper officer, upon the issuing of the bonds in payment of said railroad debt, shall make a registration thereof in a book to be kept for that purpose in his office, showing the date, amount, number, maturity and rate of interest of such bonds, and upon the subscription or donation to what railroad the same was given. And the said bonds, and bonds heretofore issued and still unpaid, in order to receive the benefits of this act, shall be registered by the holder thereof at the office of the auditor of public accounts, who shall cause the same to be registered in a book kept for that purpose. Such registration shall show the date, amount, number, maturity aud rate of interest of such bond, nn-

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der what act and by what county, township, city or town issued; and the auditor shall, under his seal of office, certify upon such bond the fact of such registration, for which registration and certificate the auditor shall be entitled to a fee of one dollar from the holder of each bond. [R. S. 1874, ch. 113, § 12, p. 792.

123. [VALUE CERTIFIED TO AUDITOR.] § 3. In all cases, when any county, township, incorporated city or town shall issue bonds under the provisions of law, and to be entitled to the benefits of this act, it shall be the duty of the county clerk of such county, or of the officer to whom or to whose office the assessment rolls for state taxation are or shall be returnable, within five days after such returns, to make out and transmit to the state auditor, to be filed in his office, a certificate stating the total value of all property, real and personal, within such county, township, city or town, as exhibited by such assessment. [R. S. 1874, ch. 113, § 13, p. 792.

124. [AUDITOR ESTIMATE RATE.] § 4. When the bonds of any county, township, city or town shall be so registered, the state auditor shall annually ascertain the amount of interest for the current year due and accrued and to accrue upon such bonds, and from the amount so ascertained he shall deduct the amount in the state treasury placed to the credit of said county, township, city or town, as herein provided and directed; and from the basis of the certificate of valuation of property heretofore provided to be transmitted to him, or, in case no such certificate shall be filed in his office, then upon the basis of the total assessment of such county, township, city or town, for the year next preceding, he shall estimate and determine the rate per centum on the valuation of property within such county, township, city or town, requisite to meet and satisfy the amount of interest unprovided for, together with the ordinary cost to the state of collection and disbursement of the same, to be estimated by the auditor and treasurer, and shall make and transmit to the county clerk of such county, or to the proper officer or authority whose duty it is or shall be to prepare the estimates and books for the collection of state taxes in such county, township, city or town, a certificate stating such estimated requisite per centum for such purpose, to be filed in his office; and the same per centum shall thereupon be deemed added to and a part of the per centum which is or may be levied or provided by law for purposes of state revenue, and shall be so treated by such clerk, officer or authority, in making such estimates and books for the collection of taxes; and the said tax shall be collected with the state revenue, and all laws relating to the state revenue shall apply thereto, except as herein otherwise provided. [R. S. 1874, ch. 113, § 14, p, 793.

125. [CUSTODIAN—NOT LIABLE—COLLECTION, ETC.] § 5. The state shall be deemed the custodian only of the several taxes so collected and credited to such county, township, city or town, and shall not be deemed in any manner liable on account of any such bonds; but the tax and funds so collected shall be deemed pledged and appropriated to the payment of the interest and principal of the registered bonds herein provided for, until fully satisfied. The state shall annually collect and apply all the said taxes and funds placed to the credit of such county, township, city or town, for and during the term of

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eight years, to the payment of the annual interest on such registered bonds of such county, township, city or town, in the same manner as interest on the bonds of the state is or may be collected and paid, but in like moneys as shall be receivable in payment of said taxes; and for and during the remainder of the term of years during which said registered bonds shall remain unpaid, the funds provided in Section 1 of this act, accruing from taxes collected on the property of said railroad or railroads, and the surplus, if any, of the other funds in this act provided, remaining after the payment of the interest on the bonds, shall be applied to the payment of the principal of said registered bonds, on presentation at the state treasury, or the treasurer shall purchase the same in open market at not more than par; and upon such payment or purchase of the said bonds, the amount paid upon the principal of said bonds shall be indorsed thereon, and receipts therefor shall be taken and filed in the office of the state treasurer; and the interest coupons or bonds, when fully paid, shall be returned to the office of the state treasurer, and shall be canceled and destroyed in the same manner as those appertaining to the state debt. And the fund derived from the taxes collected on the increased assessment over the year 1868, and the tax levied to meet the interest on said registered bonds, shall continue to be annually applied to the interest of said bonds. And the said taxes and funds required in this act to be placed to the credit of counties, townships, cities and towns, shall be applied by the state treasurer to the payment of there gistered railroad bonds of such county, township, cities or towns, equally and without discrimination. [R. S. 1874, ch. 113, § 15, p. 793.

126. [DISBURSEMENT.] § 6. The state may, out of such funds, first retain or satisfy the ordinary costs of the state of the collection and disbursement thereof; and in case of non-presentment of any such bonds or interest coupons for payment, at the time and place when and where the interest on the state debt is or may be paid, then, on the beginning of the next year, the money by reason thereof undisbursed, together with any surplus for any cause remaining, shall be carried to the fund of such county, township, city or town, of the current or ensuing year, and be considered by the auditor in making his next estimate for taxation therein for such year under this act, and shall be applied accordingly during the first eight years of the operation of this act. All laws relating to the payment of interest on the state debt, or the cancelation of evidences thereof, not inconsistent with this act, shall apply to the receipt, custody and disbursement of the taxes and funds provided by this act. [R. S. 1874, ch. 113, § 16, p. 793.

127. [ROAD CONSTRUCTED—COMPLIANCE.] § 7. And it shall not be lawful to register any bonds under the provisions of this act, or to receive any of the benefits or advantages to be derived from this act, until after the railroad in aid of the construction of which the debt was incurred shall have been completed near to or in such county, township, city or town, and cars shall have been run thereon; and none of the benefits, advantages or provisions of this act shall apply to any debt, unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county,

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township, city or town, under the provisions of the laws of this state, and a majority of the legal voters living in said county, township, city or town were in favor of such aid, subscription or donation; and any county, township, city or town shall have the right, upon making any subscription or donation to any railroad company, to prescribe the conditions upon which such bonds, subscriptions or donations shall be made, and such bonds, subscriptions or donations shall not be valid and binding until such conditions precedent shall have been complied with. And the presiding judge of the county court, or the supervisor of the township, or the chief executive officer of the city or town, that shall have issued bonds to any railway or railways, immediately upon the completion of the same near to, into or through such county, township, city or town, as may have been agreed upon, and the running of the cars thereon, shall certify under oath that all the preliminary conditions in this act required to be done to authorize the registration of such bonds, and to entitle them to the benefits of this act, have been complied with, and shall transmit the same to the state auditor. with a statement of the date, amount, number, maturity and rate of interest of such bonds, and to what company and under what law issued; and thereupon the said bonds shall be subject to registration by the state auditor, as is hereinbefore provided. [R. S. 1874, ch. 113, § 17, p. 794.

128. [Representation in Board of Directors.] § 8. And each railway company in aid of which any bonds shall hereafter be issued by any county, township, incorporated city or town, to pay for any subscription to the capital stock of such company, or for any donation made to such company, shall give to such counties, townships, cities and towns, collectively, a representation in the board of directors of such company of one fourth of the number of such board of directors, until after the said railway shall have been completed, and the cars shall have run thereon, and until all the conditions of the subscriptions and donations to such railway company; by such counties, townships, cities and towns, shall have been fully settled and complied with by such railway company; and thereafter the said counties, townships, cities and towns shall be represented in said boards of directors only in the manner and proportion that other stockholders are represented; and the governor of the state is hereby authorized and empowered to appoint the directors herein provided to represent the interests of said counties, townships, cities and towns in the boards of directors of such railways as shall receive bonds to be entitled to the benefits of this act. [R. S. 1874, ch. 113, § 18, p. 794.

129 .[Increased Valuation Deducted in Ascertaining State Rates.] § 9. And the state auditor, from the total value of all the property in the state, after the same shall have been equalized in accordance with the provisions of "An act to amend the revenue laws, and to establish a state board of equalization of assessments," approved March 8, 1867, shall deduct the amount of the said increased valuation of the taxable property above the valuation of the year 1868, in such counties, townships, incorporated cities and towns as may be entitled to the benefits of this act, and the taxes upon which are herein directed to be credited to counties, townships, cities and towns, and

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upon the amount remaining he shall cause to be collected such a per cent. as shall be sufficient to pay the appropriations and other demands upon the treasury due to the end of each fiscal year; and the same per cent. shall also be collected on the said increased valuation above the valuation of the year 1868, and applied as herein provided. [R. S. 1874, ch. 113, § 19, p. 794.

130. [ENTRY OF PAYMENT.] § 10. Upon the payment of any such registered bond or interest coupons by the county, township, city or town issuing the same, and presentation thereof to the state auditor, he shall cause due entry thereof to be made in his office. [R. S. 1874, ch. 113, § 20, p. 795.

131. [BONDS FULLY PAID IN TEN YEARS.] § 11. And if the principal and interest of the bonds registered under the provisions of this act shall be fully paid and canceled at any time before the expiration of the full term of ten years, during which the funds provided in section one of this act are to be applied to the credit of such county, township, city or town, then the provisions of this act in respect thereto shall cease and determine, and no further money derived from said taxes shall be so applied. [R. S. 1874, ch. 113, § 21, p. 795.

132. [COLLECTOR'S BOND—FEES.] § 12. The collectors' bonds in counties, townships, cities and towns where collections shall be made under the provisians of this act, shall be increased fifty per centum, and collectors in counties not under township organization shall pay into the state treasury a sufficient amount of the taxes collected in such county to meet the interest to be annually paid on such registered bonds, on or before the 20th day of June in each year. And there shall be allowed and paid to county, township, city or town collectors, for collecting and paying over the taxes levied by virtue of this act, the following rates of commissions, to be ascertained and computed in the same manner that commissions for collecting and paying over the state taxes are ascertained and computed, and paid from the taxes so collected, to-wit: To township, city or town collectors, at the rate of two per centum on all sums collected, and to county collectors at the rate of one per cent. on all sums received by them from township, city and town collectors, which shall be in full for receiving the same and paying it into the state treasury, and for adjusting the accounts of and settling with the township, city and town collectors for their collections of said tax; and a commission of three per cent. on all sums by themselves collected and paid over into the state treasury. [R. S. 1874, ch. 113, § 22, p. 795.

AN ACT to enable counties, cities, townships, school districts, and other municipal corporations, to take up and cancel outstanding bonds and other evidences of indebtedness, and fund the same. In force March 26, 1872.

133. [NEW BONDS FOR OLD.] § 1. That in all cases where any county, city, township, school district, or other municipal corporation, have issued bonds or other evidences of indebtedness for money, on account of any subscription to the capital stock of any railroad company, or on account of or in aid of any public improvement, or for any

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other purposes, which are now binding or subsisting legal obligations against any such county, city, township, school district or other municipal corporations, and remaining outstanding, and which were properly authorized by law, the proper authorities of any such county, city, township, school district or other municipal corporation may, upon the surrender of any such bonds, or other evidences of indebtedness, or any number thereof, issue in place or in lieu thereof, to the holders or owners of the same, new bonds or other evidences of indebtedness, in such form, for such amount, upon such time, not exceeding the term of twenty years, and drawing such rate of interest as may be agreed upon with such holders or owners: *Provided*, such new bonds or other evidences of indebtedness, shall not be for a greater sum than the principal sum or sums named in such original bonds or other evidences of indebtedness, nor bear a greater rate of interest than the rate represented in the original bonds or other evidences of indebtedness; and such bonds or other evidences of indebtedness, so issued, shall show on their face that they are issued under this act: *And, be it further provided*, that the issue of such new bonds in lieu of such indebtedness, shall be authorized by a vote of a majority of the legal voters of such county, city, township, school district or other municipal corporation, voting either at some annual or special election of such municipal corporation. [R. S. 1874, ch. 113, § 27, p. 796.

AN ACT to require state and county treasurers to deliver up bonds and coupons issued in aid of railroad or other corporations, which have been paid, to any person or persons who may be authorized by any county, town or city to receive the same. In force July 1, 1872.

134. [PAID BONDS DELIVERED UP.] § 1. That the treasurer of state, and all county treasurers in the state, at whose office any county, town or city bonds or coupons are made payable by law, which have been issued in aid of any railroad or other corporation or in payment of the stock of any such railroad or other corporation in this state, shall, at least once in each year, after this act shall be in force, if so requested by the proper authorities of any such county, town or city, account to and with any person designated by any such county, town or city, for any and all money that may have come to his or their hands for the payment of any bonds or coupons, so issued as aforesaid, and shall, upon such accounting, deliver up to such person so designated by any of the counties, towns or cities aforesaid, any and all bonds or coupons that he or they may have fully paid off and discharged out of the money coming into their hands for such purpose, and to take a voucher for all such bonds or coupons so delivered. [R. S. 1874, ch. 113, § 24, p. 795.

135. [FEES—SALARY.] § 2. There shall be allowed and paid out to the county treasurers, and to the county, town and city collectors for collecting, receiving and paying out any and all taxes levied for the payment of any such bonds or coupons or interest on the same, the amount of one-half per centum, as fees for such service, and no more, for such amount so paid out: *Provided*, if any of the above officers are now or may be hereafter paid a salary for the performance of of these duties, then they shall not be paid any other compensation whatsoever. [R. S. 1874, ch. 113, § 25, p. 795.

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AN ACT to provide for the payment of the registered indebtedness of counties, townships, cities and towns. In force July 1, 1874.

136. [SURPLUS FUNDS.] § 1. On the first day of July each year, the treasurer and auditor shall estimate the amount of surplus funds which will remain in the state treasury to the credit of each of the local bond funds, after deducting the amount necessary for the payment of all interest on the registered railroad bonds which will fall due before the receipt of taxes by the next levy; and on the third Monday of September of each year such surplus shall be applied to the purchase of such registered bonds, at not more than par, on their presentation at the state treasury, in the manner hereinafter provided. [R. S. 1874, ch. 113, § 29, p. 796.

137. [PUBLICATION.] § 2. The treasurer shall, during the month of July of each year, publish such detailed estimate, showing the surplus, if any, to the credit of the bond fund of each county, township, city or town having a registered railroad debt, with the announcement that on the third Monday in September following, such surplus shall be used at the state treasury in the purchase from the lowest bidder, at not more than par, of the indebtedness of the counties, townships, cities and towns registered in pursuance of law. The surplus to the credit of each county, township, city or town shall only be applied to the purchase of the registered bonds of such county, township, city, or town. The publication required to be made by the treasurer shall be made for five days during the month of July in some daily paper of general circulation in the cities of Springfield and Chicago. [R. S. 1874, ch. 113, § 30, p. 796.

138. [BIDS RECEIVED—BONDS CANCELED.] § 3. Bids shall be received until noon of such third Monday of September, when the treasurer and auditor shall open them and make awards to the lowest bidders; and upon any such payment or purchase of such bonds, the amount paid upon the principal thereof shall be indorsed on said bonds, and receipts therefor shall be taken and filed in the office of state treasurer; and the bonds, when fully paid, shall be canceled by the state treasurer and returned to the proper officers of the locality issuing the same. [R. S. 1874, ch. 113, § 31, p. 797.

139. [HOW SURPLUS FUNDS INVESTED.] § 4. If there shall be no proposals to sell the bonds of any county, township, city or town, at not more than par, sufficient to absorb such surplus funds, it shall be the duty of the treasurer to invest such surplus not expended in the payment or purchase of such bonds, in United States bonds at their market value; and thereafter the interest on such United States bonds shall be added to the fund to which such bonds belong, and on the first of July of each year the value of such United States bonds belonging to the several funds shall be considered in the estimate made by the auditor and treasurer aforesaid. The United States bonds shall be sold and the proceeds applied to the purchase of registered bonds offered, at not more than par, on the third Monday in September. And whenever the invested surplus of any local bond fund shall be equal to the amount outstanding of the registered indebtedness of the county, township, city or town to which such funds belong, such

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county, township, city or town shall cease to receive the benefits of the act of April 16, 1869; and the auditor shall only levy for interest, in case the interest earned by such invested surplus shall not be sufficient to pay the interest on the registered bonds outstanding. [R. S. 1874, ch. 113, § 32, p. 797.

AN ACT to amend an act entitled "An act to limit and determine the time for which counties, cities, townships, towns and precincts in this state, shall be liable and holden to issue aid for the building of any railroad in pursuance of any vote taken in conformity to the laws of this state," approved March 17, 1874. In force July 1, 1877.

140. [LIMITS TIME OF ISSUING BONDS.] § 1. That the liability of all counties, cities, townships, towns or precincts, which have voted aid or donations to or subscriptions to the capital stock of any railroad company in conformity to the laws of this State for the building, or in aid of the building, of any railroad to, into, through or near such county, city, township, town or precinct, to issue such voted aid, shall cease and determine upon and after the first day of July, A. D. 1880: and no bonds shall be issued, or stock subscribed, to any such railroad company after that date upon account of or upon the authority of such vote: *Provided*, This act shall not apply in any case where the express conditions of the vote for such aid shall extend the time for the building of such railroad beyond the said date; *And it is further provided*, That this act shall not apply in any case where any railroad shall have been built or shall before said date be built, in accordance with the conditions of the vote for aid to such railroad; *and it is further provided*, That this act shall not apply to any case where such aid shall have been deposited, or shall before said date be deposited with any trustee or trustees, upon written or printed conditions to be delivered to said railroad company at some future time: *Provided further*, That this act shall not be construed so as to require any county, city, township, town or precinct to issue, pay or deliver any such aid or bonds where the same may have been voted and subscribed upon any condition or conditions which shall not be complied with within the time expressed in the notice of election, proceedings or vote authorizing such aid to be paid or given. [Laws 1877, § 1, p. 157.

AN ACT to amend an act entitled "An act relating to county and city debts, and to provide for the payment thereof by taxation in such counties and cities," approved February 13, 1865; and to amend the title thereof. Approved and in force April 27, 1877.

141. [TITLE OF ACT.] § 1. That an act entitled "An act relating to county and city debts, and to provide for the payment thereof by taxation in such counties and cities," approved February 13, 1865, and the title of the said act be, and the same are hereby, so amended as to be and read as follows: The title of the said act shall be; An act to enable counties, cities, towns, townships, school districts and other municipal corporations to fund, retire and purchase their outstanding bonds and other evidences of indebtedness, and to provide for the registration of new bonds or other evidences of indebtedness in the office of the Auditor of Public Accounts.

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The first and subsequent sections of the said act shall be as follows:

142. [NEW BONDS MAY BE ISSUED FOR OLD ONES.] § 1. That in all cases where any county, city, town, township, school district or other municipal corporation has issued bonds or other evidences of indebtedness for money, or has contracted debts, which are the binding, subsisting, legal obligations of such county, city, town, township, school district or other municipal corporation, and the same, or any portion thereof, remain outstanding and unpaid, it shall be lawful for the proper corporate authorities of any such county, city, town, township, school district, or other municipal corporation, upon the surrender of any such bonds or other evidences of indebtedness, or any number or portion thereof, to issue in lieu or place thereof, to the owners or holders of the same, new bonds or other evidences of indebtedness, in such form, for such amount, upon such time, not exceeding twenty years, payable at such place, and bearing such rate of interest, not exceeding the rate of interest specified in the bonds or evidences of indebtedness, in lieu of which they are issued, as may be agreed upon with the owners or holders of such outstanding bonds or other evidences of indebtedness. And it shall also be lawful for the proper corporate authorities of any such county, city, town, township, school district or other municipal corporation to issue the bonds or other evidences of indebtedness of such county, city, town, township, school district or other municipal corporation, and sell the same to raise money to purchase or retire any or all of such outstanding bonds or other evidences of indebtedness; such bonds or evidences of indebtedness to be in such sums, bear such rate of interest, not exceeding eight per centum per annum, and be payable at such time and place, as may be specified in the vote of the people authorizing their issue; the proceeds of the sales of such bonds to be expended under the direction of the corporate authorities aforesaid in the purchase or retiring of the outstanding bonds or other evidences of indebtedness of such county, city, town, township, school district or other municipal corporation, and for no other purpose whatever. All bonds or other evidences of indebtedness issued under the provisions of this act shall show upon their face that they are issued under this act, and the purpose for which they are issued, and may provide for the payment of a portion of the principal, annually, until fully paid. The new bonds or other evidences of indebtedness authorized to be issued by this act, shall not be for a greater sum in the aggregate than the principal and accrued or earned interest unpaid, of such outstanding bonds or other evidences of indebtedness: *Provided*, That no new bonds or other evidences of indebtedness shall be issued under this act, unless the same shall be first authorized by a vote of a majority of the legal voters of such county, city, town, township, school district or other municipal corporation voting at some general election or special election held for that purpose. [Laws 1877, § 1, p 159.

143. [OLD BONDS CANCELED—NEW ONES TO BE REGISTERED.] § 2. Upon the surrender of any such bond or other evidence of indebtedness under this act, the same shall be endorsed canceled, and shall from time to time be destroyed under the direction of the authority issuing the same. Upon the issuing of any new bond or evidence of indebtedness, the clerk or other officer having custody of the records

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of the fiscal matters of such county, city, town, township, school district or other municipal corporation, as the case may be, shall make registration thereof in a book to be kept in his office for that purpose, showing the date, amount, number, date of maturity, rate of interest and place of payment of such new bond or other evidence of indebtedness, and the description of the bond or evidence of indebtedness for which, or for the purchasing or retiring of which the same was given, as nearly as practicable. On presentation of any such new bond or other evidence of indebtedness issued under this act at the office of the Auditor of Public Accounts for registration, the said auditor shall cause the same to be registered in his office in a book to be kept for that purpose, such registration shall show the date, amount, number, date of maturity, rate of interest, time when such interest is payable, and place of payment of the principal and interest of such bond or other evidence of indebtedness, under what act, by what authority, for what purpose, and by what county, city, town, township, school district or other municipal corporation issued, and the name of the person or persons presenting the same for registration; and for such registration the auditor shall be entitled to a fee of twenty-five cents, and the auditor shall under his seal of office certify upon such bond the fact of such registration, for which the auditor shall be entitled to a fee of twenty-five cents, such fees to be paid by the person or persons desiring such registration and certificate. [Laws 1877, § 2, p 159.

144. [VALUE TAXABLE PROPERTY CERTIFIED.] § 3. In all cases where any county, city, town, township, school district or other municipal corporation shall issue any bonds or evidences of indebtedness under this act, it shall be the duty of the county clerk of such county, or other officer to whom or whose office the assessment rolls for state taxation of the property within such county, city, town, township, school district or other municipal corporation are or shall be returnable within five days after the total value of the property subject to taxation therein shall be returned to him, to make out and transmit to the auditor of public accounts, to be filed in his office, a certificate setting forth the total value of all taxable property of every nature and description within such county, city, town, township, school district or other municipal corporation as exhibited by such assessment. [Laws 1877, § 3, p. 160.

145. [AUDITOR TO CERTIFY RATE.] § 4. When the bonds or other evidences of indebtedness of any county, city, town, township, school district or other municipal corporation to the amount of five thousand dollars, shall be so registered, the auditor of public accounts, shall annually ascertain the amount of interest for the current year due and accrued, and to accrue, on all such bonds and evidences of indebtedness, so registered in his office on the first day of January, then next preceding, to which amount, where such bonds or evidences of indebtedness provide for the payment of a portion of the principal thereof, annually, he shall add such an amount as shall be equal to the portion of the principal specified in such bonds or evidences of indebtedness to be so paid, and shall upon the basis of the certificate of the valuation of property so to be transmitted to him as aforesaid, or in case no such certificate shall be transmitted to him, or filed in his office, then

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upon the basis of the total valuation of the property in such county, city, town, township, school district or other municipal corporation for the year next preceding, estimate and determine the rate per centum upon the valuation of such property requisite to meet and satisfy the said interest or interest and principal, as the case may be, together with the ordinary cost to the state of the collection and disbursement of the same, to be estimated by the auditor and state treasurer, and shall make and transmit to the county clerk of such county, or of the county in which such city, town, township, school district or other municipal corporation is situated, or to the officer or authority whose duty it is, or may be, to prepare the estimates and books for the collection of state taxes in such county, city, town, township, school district or other municipal corporation, a certificate setting forth such estimated requisite per centum for such purposes to be filed in his office; and the said per centum shall thereupon be deemed added to and a part of the per centum which is, or may be, levied or provided by law for the purposes of state revenue, and shall be so treated by such clerk, officer or authority, in making such estimates and books for the collection of state taxes; and the said taxes shall be collected with the state taxes, and all laws relating to the state revenue shall apply thereto, except as herein otherwise provided; and such per centum shall be deducted from the levy of such county, city, town, township, school district or other municipal corporation for the current or year, ensuing to be applied by the state treasurer on their respective bonds issued under the provisions of this act. [Laws 1877, § 4, p. 160.

146. [State Custodian — Collection — Payment.] § 5. The state shall be deemed the custodian only of the tax so collected, and shall not be deemed in any manner liable on account of such bonds or other evidences of indebtedness; but the tax and funds so collected shall be deemed pledged and appropriated to the payment of the principal and interest of the registered bonds and evidences of indebtedness, to satisfy which the same is hereinbefore provided to be collected as aforesaid, and such new bonds and evidences of indebtedness issued under the authority hereof shall be deemed secured and provided for in virtue and faith hereof until fully satisfied. The state shall annually collect and apply the said fund to the satisfaction of the interest, or interest and portion of the principal, as the case may be, of such registered bonds or evidences of indebtedness of any such county, city, town, township, school district or other municipal corporation to the extent the same is herein contemplated to be derived from such tax in the same manner as the interest on the bonds of the state is, or may be, collected or paid, and in like moneys as shall be receivable in payment of state taxes, and moneys so paid upon the principal of any such bonds or evidences of indebtedness, shall be indorsed thereon, and due receipts therefor shall be taken and filed in the office of the Auditor of Public Accounts or State Treasurer, and interest coupons or bonds or other evidences of indebtedness so paid shall be returned to one of said officers and shall be cancelled and returned to the corporate authorities of the municipality which issued the same, and destroyed in the same manner as those pertaining to the state debt. [Laws 1877, § 5, p. 161.

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147. [How Money Disbursed.] § 6. The state may, out of such fund, first retain or satisfy the ordinary cost to the state of the collection and disbursement thereof, and in case of the non-presentment of any such bond or evidence of indebtedness or interest coupon of any such county, city, town, township, school district or other municipal corporation for payment at the times and when and where the interest on the state debt is or may be paid, then, on the beginning of the next year, the moneys by reason thereof undisbursed together with any surplus for any cause remaining, shall be carried to the fund of such county, city, town, township, school district or other municipal corporation, of the current or ensuing year, and be considered by the Auditor in making his next estimate for taxation therein for such year under this act, and shall be applied accordingly. All laws relating to the payment of interest on the state debt, or the cancellation of the evidences thereof, not inconsistent with this act, shall apply to the receipt, custody, and disbursement of the taxes and funds provided by this act. [Laws 1877, § 6, p. 161.

148. [When Registered Bonds Not Paid.] § 7. Upon the maturity of such registered bond or other evidence of indebtedness, and the non-payment thereof by the county, city, town, township, school district or other municipal corporation issuing the same, the holder thereof, may cause the same to be registered in the office of the Auditor as a matured or unsatisfied bond or evidence of indebtedness, and thereupon, for the purpose of providing for the payment of the principal thereof at the rate of five per centum of such principal, annually, and of the interest thereon in arrears, and for the current year to accrue, together with the cost to the state of the collection and disbursement thereof, as aforesaid; the same proceedings, in all respects, shall be had as is hereinbefore provided for the payment of the interest on such bonds and evidences of indebtedness, by the collection of an annual tax sufficient for the purposes in this section contemplated; and the same shall be collected and applied as aforesaid to such purpose from year to year until the full satisfaction thereof, when such bonds or evidences of indebtedness shall be canceled and returned as hereinbefore provided. [Laws 1877, § 7, p. 162.

149. [Entry of Payment, etc.] § 8. Upon the payment of any such registered bond or evidence of indebtedness, and presentation thereof to the auditor, he shall cause due entry thereof to be made in his office. It shall be lawful for the corporate authorities of any such municipal corporation, or officers authorized by law to call elections therein, on the petition of ten legal voters resident therein, to submit to the voters thereof at any election held therein, the question of issuing bonds under this act, by posting notices in ten of the most public places therein, and by publishing the same in the nearest newspaper, twenty days before said election, which notice shall state the number of bonds proposed to be issued; the amount of each; the rate of interest; when and where payable; for what purpose issued, and the time and place, when and where said election will be held. And upon like petition and notice, it shall be lawful for such corporate authorities, or officers, to submit the question of issuing bonds under this act, at a special election, which shall be held and conducted in like manner as other elections therein. The ballots shall read;

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"For issuing the bonds," or, "Against issuing the bonds." If a majority of the votes cast be "For issuing the bonds," the same shall be issued in conformity to the specifications of said notice. Nothing contained in this act, or in the act to which this is an amendment shall be held to repeal, or in anywise affect the power of the city of Chicago to issue new bonds of said city, conferred by an act of the general assembly, approved February 13, 1863, amending the charter of said city, nor to in anywise affect any other law which authorizes municipal corporations to issue bonds or other evidences of indebtedness, and which does not provide for the registration thereof. [Laws 1877, § 8 and § 9, p. 162.

150. [FEES—COLLECTORS' BOND.] § 10. There shall be allowed to the officers collecting and paying over the taxes authorized to be collected under the provisions of this act, the same fees or compensation as is or may be allowed by law for collecting and paying over state taxes; and where such tax is levied, the bonds of the collector thereof shall be increased in proportion to the estimated amount of such tax to be collected. [Laws 1877, § 10, p. 163.

AN ACT to provide for the incorporation of cities and villages. In force July 1, 1872.

151. [POWERS OF THE CITY COUNCIL.] § 1. * * * *

Twenty-fifth. To provide for and change the location, grade and crossings of any railroad.

Twenty-sixth. To require railroad companies to fence their respective railroads, or any portion of the same, and to construct cattle guards, crossings of streets and public roads, and keep the same in repair, within the limits of the corporation. In case any railroad company shall fail to comply with any such ordinance, it shall be liable for all damages the owner of any cattle or horses, or other domestic animal, may sustain, by reason of injuries thereto while on the track of such railroad, in like manner and extent as under the general laws of this state, relative to the fencing of railroads; and actions to recover such damages may be instituted before any justice of the peace or other court of competent jurisdiction.

Twenty-seventh. To require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property in the use of such railroads. To compel such railroad to raise or lower their railroad tracks to conform to any grade which may, at any time, be established by such city, and where such tracks run lengthwise of any such street, alley or highway, to keep their railroad tracks on a level with the street surface, and so that such tracks may be crossed at any place on such street, alley or highway. To compel and require railroad companies to make and keep open and to keep in repair ditches, drains, sewers and culverts along and under their railroad tracks, so that filthy or stagnant pools of water cannot stand on their grounds or right of way, and so that the natural drainage of adjacent property shall not be impeded. [R. S. 1874, ch. 24, § 62, p. 219.

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AN ACT in relation to the collection of taxes and special assessments. In force May 2, 1873.

152. [ILLINOIS CENTRAL—SEVEN PER CENT. GROSS INCOME.] § 18. In consideration of the grants, privileges and franchises herein conferred upon said company for the purposes aforesaid, the said company shall, on the first Mondays of December and June in each year, pay into the treasury of the State of Illinois five per centum on the gross or total proceeds, receipts or income derived from said road and branches, for the six months then next preceding. The first payment of such percentage on the main trunk of said road to commence four years from the date of said deed of trust, and on the branches, six years from the date aforesaid, unless said road and branches are sooner completed, then from the date of completion. And for the purpose of ascertaining the proceeds, receipts or income aforesaid, an accurate account shall be kept by said company, a copy whereof shall be furnished to the Governor of the State of Illinois; the truth of which account shall be verified by the affidavits of the treasurer and secretary of such company. And for the purpose of verifying and ascertaining the accuracy of such account, full power is hereby vested in the Governor of the State of Illinois, or any other person by law appointed, to examine the books and papers of said corporation, and to examine, under oath, the officers, agents and employees of said company, and other persons. And if any person, so examined by the Governor or other authority, shall knowingly and willfully swear falsely, or if the other officers making such affidavits shall knowingly or willfully swear falsely, every such person shall be subject to the pains and penalties of perjury. [R. S. 1874, ch. 120, § 308, p. 909.

153. [ILLINOIS CENTRAL R. R.—LANDS TAXABLE.] § 22. The lands selected under said act of Congress, and hereby authorized to be conveyed shall be exempt from all taxation under the laws of this state, until sold and conveyed by said corporation or trustees, and the other stock, property and effects of said company shall be, in like manner, exempt from taxation for the term of six years from the passage of this act. After the expiration of six years, the stock, property and assets belonging to said company shall be listed by the president, secretary, or other officer, with the auditor of state, and an annual tax for state purposes shall be assessed by the auditor upon all the property and assets of every name, kind and description belonging to said corporation. Whenever the taxes levied for state purposes shall exceed three-fourths of one per centum per annum, such excess shall be deducted from the gross proceeds or income herein required to be paid by said corporation to the state, and the said corporation is hereby exempted from all taxation of every kind, except as herein provided for. The revenue arising from said taxation, and the said five per cent. of gross or total proceeds, receipts or income aforesaid, shall be paid into the state treasury in money, and applied to the payment of interest-paying state indebtedness until the extinction thereof: *Provided*, in case the five per cent. provided to be paid into the state treasury, and the state taxes to be paid by the corporation, do not amount to seven per cent. of the gross or total proceeds, receipts or income, then the said company shall pay into the state treasury the difference, so as to make the whole amount paid

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equal, at least, to seven per cent. of the gross receipts of said corporation. [R. S. 1874, ch. 120, § 309, p. 910.

AN ACT to compel the trustees of the lands granted to the Illinois Central Railroad Company to execute their trust. In force July 1, 1873.

154. [PREAMBLE.] WHEREAS, By act of Congress, approved September 20, 1850, a grant of lands was made to this state for the purpose of aiding in the construction of a railroad from Chicago to Mobile, and between certain other points; and whereas the General Assembly of this state, by an act entitled "An act to incorporate the Illinois Central Railroad Company," approved February 10, 1851, incorporated the Illinois Central Railroad Company, and granted to said company the said lands, with provision that they should be conveyed to and held and sold by certain trustees provided for in said act; and it was provided among other things that the said lands should be exempt from all taxation under the laws of this state until sold and conveyed by the said corporation or trustees; and whereas it was further expressly provided in said act, as a part of the condition of said grant and said exemption from taxation, that all lands remaining unsold at the expiration of ten years after the completion of the road of said company, and its branches as therein specified, should be offered at public sale annually until the whole should be disposed of, to the end that the same might become taxable at the earliest possible time after the expiration of that period; and whereas the said road and branches have been completed for more than fourteen years, and large tracts of said lands remain unsold, and no proper effort is made by said company or said trustees to sell the same according to the true intent and meaning of said act, and thereby the state is deprived of large revenues which it ought to derive from the taxation of said lands, and the other owners of property in the vicinity of said lands are compelled to bear more than their proportion of the burden of taxation; therefore,

155. [LANDS ANNUALLY OFFERED FOR SALE.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly*, That it shall be the duty of the trustees named in section fifteen of an act entitled "An act to incorporate the Illinois Central Railroad Company,' approved February 10, 1851, or their successors in the trust in the said act mentioned, to offer at public sale annually all the lands by the said act granted, and by the state conveyed, or intended to be conveyed to the said Illinois Central Railroad Company, and by said company conveyed, or intended to be conveyed, to the said trustees by deed, dated March 24, 1851, and which remain unsold, until the whole are disposed of. And for the sake of securing the speedy and proper execution of their trust pursuant to said act, it is hereby made the duty of the said trustees and their successors, upon some day during the months of October and November, 1873, and during the months of April and May in each year thereafter, until all said lands are disposed of, to offer for sale at public vendue, at the court house in each county, all such lands in such county then remaining unsold: *Provided*, this act shall not be so construed as to prevent said trustees from selling any of said lands at private sale. [R. S. 1874, ch. 120, § 310, p. 910.

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156. [NOTICE OF SALE.] § 2. Before making any sale in any county under the provisions of this act, the trustees shall give public notice thereof, by advertisement in some newspaper published in the county where the land to be sold is situated, which advertisement shall contain a description of the land and notice of the time, terms and place of sale, and shall be published for at least four successive weeks prior to the first day of sale. [R. S. 1874, ch. 120, § 311, p. 911.

157. [HOW OFFERED FOR SALE.] § 3. At every such sale in any county all the lands lying in such county shall be offered for sale in such quantities as will be most advantageous in promoting a fair sale thereof, and not exceeding forty acres in one tract, and shall be sold to the highest and best bidder or bidders therefor, and no such lands shall be withheld or withdrawn from sale so long as any one will bid therefor any sum not less than two dollars per acre. Said land shall be offered for sale in the order advertised, and when any tract is put up for sale the auctioneer or person selling shall cry the same for at least five minutes. [R. S. 1874, ch. 120, § 312, p. 911.

158. [CONVEYANCE — TAXES.] § 4. Upon the making of any such sale the trustees shall make and deliver to the purchaser or purchasers a deed of conveyance vesting the title to the land sold in such purchaser or purchasers so that the said land shall thereafter become immediately taxable: *Provided*, that when any such sale shall be made upon time, the said trustees may require for the deferred payments note or notes, to be secured by mortgage or deed of trust, in such form and upon such terms as may be deemed best. [R. S. 1874, ch. 120, § 313, p. 911.

159. [TO COMPEL SALE.] § 5. In case the said trustees, or their successors, shall fail or refuse to offer the said lands for sale in good faith in the manner herein provided, and sell the same to the highest and best bidder or bidders, when a sum not less than two dollars per acre shall be bid therefor, it shall be the duty of the Attorney General of this state to file in the supreme court of this state a petition praying the court for a *mandamus* to compel the said trustees and their successors in office to make sale pursuant to the terms of this act; and the said trustees may be notified in the same manner as defendants in cases of *mandamus* are notified. And the said supreme court are hereby vested with jurisdiction to compel the said trustees to offer the said lands for sale, and sell and convey the same in the manner herein provided; or in case of neglect or refusal, to appoint one or more commissioners or masters in chancery to make such sales and conveyances, and to fix the terms and times of sale, and generally to make all orders in the premises which the court shall deem proper to insure the execution of their duties according to the true intent and meaning of said section 17 of said act of incorporation, not inconsistent with the terms of this act. [R. S. 1874, ch. 120, § 314, p. 911.

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AN ACT in relation to the mode of proving title to the lands granted to the Illinois Central Railroad Company. In force July, 1, 1872.

160. [COMMISSIONER'S TRACT LIST, MAP, ETC., EVIDENCE.] § 1. That whenever it shall become necessary, in any legal proceeding, to prove the title of the Illinois Central Railroad Company, or of the trustees of said railroad company, or of any person claiming title through or under said company or trustees, to any of the lands granted by the state to said railroad company under the provisions of the act incorporating said company, the record in the proper county (or a transcript of such record, duly certified by the custodian thereof,) of the list purporting to contain the tracts of land selected by said railroad company in such county, and purporting to be certified by commissioner of the general land office as being a true abstract from the original list of selections by said company, shall be sufficient *prima facie* evidence of title in the said railroad company or the trustees thereof, as the case may be, to the lands embraced in such list; and the record in the proper county, (or a duly certified copy thereof by the custodian of such record) of the map or profile of said railroad or branches, shall be sufficient *prima facie* evidence of the line of location of said railroad or its branches in such county. [R. S. 1874, ch. 51, § 49, p. 496.

161. [APPOINTMENT, ETC., OF TRUSTEES.] § 2. A copy of the commission issued by the governor or by the president of said railroad company to any successor of any of the original trustees (or any of their successors) named in said act of incorporation, certified by the secretary of state under the great seal of the state, or by the commissioner of the land department of said railroad company or its president, under the common seal of said company, as the case may be, shall be sufficient *prima facie* evidence of the regular appointment and due authority of the person named as trustee in such commission. [R. S. 1874, ch. 51, § 50, p. 496.

ACT of Congress in relation to the Illinois Central Railroad. September, 20, 1850.

162. [RIGHT OF WAY.] § 1. The right of way through the public lands be and the same is hereby granted to the state of Illinois for the construction of a railroad from the southern terminus of the Illinois and Michigan Canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago, on Lake Michigan, and another *via* the town of Galena in said state, to Dubuque in the state of Iowa, with the right also to take necessary materials of earth, stones, timber, etc., for the construction thereof: *Provided*, that the right of way shall not exceed one hundred feet on each side of the length thereof, and a copy of the survey of said road and branches, made under the direction of the legislature, shall be forwarded to the proper local land offices, respectively, and to the general land office at Washington city, within ninety days after the completion of the same. [See R. S. 1874, § 1, p. 92.

163. [LAND GRANT.] § 2. There be and is hereby granted to the state of Illinois, for the purpose of aiding in making the railroad and

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branches aforesaid, every alternate section of land designated by even numbers, for six sections in width on each side of said road and branches; but in case it shall appear that the United States have, when the line or route of said road and branches is definitely fixed by the authority aforesaid, sold any part of any section hereby granted, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said state, to select, subject to the approval aforesaid, from the lands of the United States most contiguous to the tier of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid, which lands, being equal in quantity to one-half of six sections in width on each side of said road and branches, the state of Illinois shall have and hold to and for the use and purpose aforesaid: *Provided*, that the lands to be so located shall in no case be further than fifteen miles from the line of road: *And, further provided*, the construction of said road shall be commenced at its southern terminus, at or near the junction of the Ohio and Mississippi rivers, and its northern terminus upon the Illinois and Michigan Canal, simultaneously, and continued from each of said points until completed, when said branch roads shall be constructed, according to the survey and location thereof: *Provided further*, that the lands hereby granted shall be applied in the construction of said road and branches respectively, in quantities corresponding with the grant for each, and shall be disposed of only as the work progresses, and shall be applied to no other purpose whatsoever: *And, provided further*, that any and all lands reserved to the United States by the act entitled "An act to grant a quantity of land to the state of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois river with those of Lake Michigan," approved March second, eighteen hundred and twenty-seven, be and the same are hereby reserved to the United States from the operations of this act. [See R. S. 1874, § 2, p. 92.

164. [Lands Reserved.] § 3. The sections and parts of sections of land, which, by such grant, shall remain to the United States, within six miles on each side of said road and branches, shall not be sold for less than double the minimum price of the public lands when sold. [See R. S. 1874, § 3, p. 92.

165. [Lands how Disposed of—Public Highway.] § 4. The said lands hereby granted to the said state shall be subject to the disposal of the legislature thereof, for the purposes aforesaid and no other; and the said railroad and branches shall be and remain a public highway, for the use of the government of the United States, free from toll or other charges upon the transportation of any property or troops of the United States. [See R. S. 1874, § 4, p. 92.

166. [Road Completed in Ten Years.] § 5. If the said railroad shall not be completed within ten years, the said state of Illinois shall be bound to pay to the United States the amount which may be received upon the sale of any part of said lands by said state, the title to the purchasers under said state remaining valid; and the title to the residue of said lands shall reinvest in the United States, to

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have and hold the same in the same manner as if this act had not been passed. [See R. S. 1874, § 5, p. 92.

167. [RATES OF TRANSPORTATION TO UNITED STATES.] § 6. The United States mail shall at all times be transported on the said railroad under the direction of the postoffice department, at such price as the congress may by law direct. [See R. S. 1874, § 6, p. 93.

168. [STATUTE AS APPLIES TO ALABAMA, ETC.] § 7. In order to aid in the continuation of said Central railroad from the mouth of the Ohio river to the city of Mobile, all the rights, privileges and liabilities hereinbefore conferred on the state of Illinois shall be granted to the states of Alabama and Mississippi respectively, for the purpose of aiding in the construction of a railroad from said city of Mobile to a point near the mouth of the Ohio river, and that public lands of the United States, to the same extent in proportion to the length of the road, on the same terms, limitations and restrictions in every respect, shall be and is hereby granted to said states of Alabama and Mississippi respectively. [See R. S. 1874, § 7, p. 93.

CHAPTER IV.

WAREHOUSES.

1. Classification.
2. Three classes defined.
3. License for Class "A."
4. Bond required.
5. Penalty—without license.
6. Inspection—mixing, etc.
7. Issuing receipts.
8. Canceling receipts.
9. Canceling and issuing receipts.
10. Not to limit liability.
11. Delivery of property.
12. Posting grain—Registrar.
13. Chief Inspector.
14. Rates of storage.
15. Loss by fire, heating, etc.
16. Tampering with stored grain.
17. Grain and scales.
18. Grain inspected.
19. Assuming to act inspector.
20. Rights when dissatisfied with inspection
21. Combinations.
22. Suits.
23. Warehouse receipts negotiable.
24. False receipts, etc.
25. Common law remedy saved.
26. Post printed copy of act.
27. Repeal.
28. Commissioners to establish grades.
29. Committee of appeals.
30. Appeals—notices.
31. Fees.
32. Collection—inspection fees.
33. When landings and levees may be leased.

AN ACT to regulate public warehouses, and the warehousing and inspect;on of grain, and to give effect to article thirteen of the constitution of this state. In force July 1, 1871.

1. [CLASSIFICATION.] § 1. That public warehouses, as defined in article thirteen of the constitution of this state, shall be divided into three classes, to be designated as classes A, B and C, respectively. [R. S. 1874, ch. 114, § 96, p. 820.

2. [THREE CLASSES DEFINED.] § 2. Public warehouses of class A shall embrace all warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses, elevators or granaries being located in cities having not less than one hundred thousand inhabitants. Public warehouses of class B shall embrace all other warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different

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owners is mixed together. Public warehouses of class C shall embrace all other warehouses or places where property of any kind is stored for a consideration. [R. S. 1874, ch. 114, § 97, p. 820.

3. [License for Class A.] § 3. The proprietor, lessee or manager of any public warehouse of class A shall be required, before transacting any business in such warehouse, to procure from the circuit court of the county in which such warehouse is situated, a license, permitting such proprietor, lessee or manager to transact business as a public warehouseman under the laws of this state, which license shall be issued by the clerk of said court upon a written application, which shall set forth the location and name of such warehouse, and the individual name of each person interested as owner or principal in the management of the same; or, if the warehouse be owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated; and the said license shall give authority to carry on and conduct the business of a public warehouse of class A in accordance with the laws of this state, and shall be revocable by the said court upon a summary proceeding before the court, upon complaint of any person in writing, setting forth the particular violation of law, and upon satisfactory proof, to be taken in such manner as may be directed by the court. [R. S. 1874, ch. 114, § 98, p. 820.

4. [Bond Required.] § 4. The person receiving a license as herein provided, shall file with the clerk of the court granting the same, a bond to the People of the State of Illinois, with good and sufficient surety, to be approved by said court, in the penal sum of ten thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman of class A, and his full and unreserved compliance with all laws of this state in relation thereto. [R. S. 1874, ch. 114, § 99, p. 820.

5. [Penalty—Without License.] § 5. Any person who shall transact the business of a public warehouse of class A without first procuring a license as herein provided, or who shall continue to transact any such business after such license has been revoked (save only that he may be permitted to deliver property previously stored in such warehouse), shall, on conviction, be fined in a sum not less than one hundred dollars nor more than five hundred dollars for each and every day such business is so carried on; and the court may refuse to renew any license, or grant a new one, to any of the persons whose license has been revoked, within one year from the time the same was revoked. [R. S. 1874, ch. 114, § 100, p. 820.

6. [Inspection—Mixing, Etc.] § 6. It shall be the duty of every warehouseman of class A to receive for storage any grain that may be tendered to him, in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, not making any discrimination between persons desiring to avail themselves of warehouse facilities—such grain, in all cases, to be inspected and graded by a duly authorized inspector, and to be stored with grain of a similar grade, received at the same time, as near as may be. In no case shall grain of different grades be mixed together while in store; but, if the owner or consignee so requests,

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and the warehouseman consent thereto, his grain of the same grade may be kept in a bin by itself, apart from that of the owners; which bin shall, thereupon, be marked and known as a "separate bin." If a warehouse receipt be issued for grain so kept separate, it shall state, on its face, that it is a separate bin, and shall state the number of such bin; and no grain shall be delivered from such warehouses unless it be inspected on the delivery thereof by a duly authorized inspector of grain. Nothing in this section shall be so construed as to require the receipt of grain into any warehouse in which there is not sufficient room to accommodate or store it properly, or in cases where such warehouse is necessarily closed. [R. S. 1874, ch. 114, § 101, p. 821.

7. [ISSUING RECEIPTS.] § 7. Upon application of the owner or consignee of grain stored in a public warehouse of class A, the same being accompanied with evidence that all transportation or other charges which may be a lien upon such grain, including charges for inspection, have been paid, the warehouseman shall issue to the person entitled thereto, a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of grain into store, and shall state upon its face the quantity and inspected grade of the grain, and that the grain mentioned in it has been received into store, to be stored with grain of the same grade by inspection, received at about the date of the receipt, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and the payment of proper charges for storage. All warehouse receipts for grain, issued from the same warehouse, shall be consecutively numbered; and no two receipts, bearing the same number, shall be issued from the same warehouse during any one year, except in a case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face "duplicate." If the grain was received from railroad cars, the number of each car shall be stated upon the receipt, with the amount it contained: if from canal boat or other vessel, the name of such craft; if from teams or by other means, the manner of its receipt shall be stated on its face. [R. S. 1874, ch. 114, § 102, p. 821.

8. [CANCELLING RECEIPTS.] § 8. Upon the delivery of grain from store, upon any receipt, such receipt shall be plainly marked across its face with the word "canceled," with the name of the person canceling the same, and shall thereafter be void, and shall not again be put in circulation, nor shall grain be delivered twice upon the same receipt. [R. S. 1874, ch. 114, § 103, p. 821.

9. [CANCELLING AND ISSUING RECEIPTS.] § 9. No warehouse receipt shall be issued, except upon the actual delivery of grain into store, in the warehouse from which it purports to be issued, and which is to be represented by the receipt; nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel stated to have been received; nor shall more than one receipt be issued for the same lot of grain, except in cases where receipts for a part of a lot are desired, and then the aggregate receipts for a particular lot shall cover that lot and no more. In cases where a part of the grain represented by the receipt is delivered out of store and the remainder

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is left, a new receipt may be issued for such remainder; but such new receipt shall bear the same date as the original, and shall state on its face that it is balance of receipt of the original number; and the receipt upon which a part has been delivered shall be canceled in the same manner as if it had all been delivered. In case it be desirable to divide one receipt into two or more, or in case it be desirable to consolidate two or more receipts into one, and the warehouseman consent thereto, the original receipt shall be canceled the same as if the grain had been delivered from store; and the new receipts shall express on their face that they are parts of other receipts, or a consolidation of other receipts, as the case may be; and the numbers of the original receipts shall also appear on the new ones issued, as explanatory of the change, but no consolidation of receipts of dates differing more than ten days shall be permitted, and all new receipts issued for old ones canceled, as herein provided, shall bear the same dates as those originally issued, as near as may be. [R. S. 1874, ch. 114, § 104, p. 821.

10. [NOT TO LIMIT LIABILITY.] § 10. No warehouseman in this state shall insert in any receipt issued by him, any language in anywise limiting or modifying his liabilities or responsibility, as imposed by the laws of this state. [R. S. 1874, ch. 114, § 105, p. 822.

11. [DELIVERY OF PROPERTY.] § 11. On the return of any warehouse receipt issued by him, properly indorsed, and the tender of all proper charges upon the property represented by it, such property shall be immediately deliverable to the holder of such receipt, and it shall not be subject to any further charges for storage, after demand for such delivery shall have been made. Unless the property represented by such receipt shall be delivered within two business hours after such demand shall have been made, the warehouseman in default shall be liable to the owner of such receipt for damages for such default, in the sum of one cent per bushel, and in addition thereto, one cent per bushel for each and every day of such neglect or refusal to deliver: *Provided*, no warehouseman shall be held to be in default in delivering if the property is delivered in the order demanded, and as rapidly as due diligence, care and prudence will justify. [R. S. 1874, ch. 114, § 106, p. 822.

12. [POSTING GRAIN—REGISTRAR, ETC.] § 12. The warehouseman of every public warehouse of class A shall, on or before Tuesday morning of each week, cause to be made out, and shall keep posted up in the business office of his warehouse, in a conspicuous place, a statement of the amount of each kind and grade of grain in store in his warehouse at the close of business on the previous Saturday; and shall, also, on each Tuesday morning, render a similar statement, made under oath before some officer authorized by law to administer oaths, by one of the principal owners or operators thereof, or by the bookkeeper thereof, having personal knowledge of the facts, to the warehouse registrar appointed as hereinafter provided. They shall also be required to furnish daily, to the same registrar, a correct statement of the amount of each kind and grade of grain received in store in such warehouse on the previous day; also the amount of each kind and grade of grain delivered or shipped by such warehouseman during the previous day, and what warehouse receipts have been can-

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celed, upon which the grain has been delivered on such day, giving the number of each receipt, and amount, kind and grade of grain received and shipped upon each; also, how much grain, if any, was so delivered or shipped, and the kind and grade of it, for which warehouse receipts had not been issued, and when and how such unreceipted grain was received by them; the aggregate of such reported cancellations and delivery of unreceipted grain, corresponding in amount, kind and grade with the amount so reported, delivered or shipped. They shall also, at the same time, report what receipts, if any, have been canceled and new ones issued in their stead, as herein provided for. And the warehouseman making such statements, shall, in addition, furnish the said registrar any further information, regarding receipts issued or canceled, that may be necessary to enable him to keep a full and correct record of all receipts issued and canceled, and of grain received and delivered. [R. S. 1874, ch. 114, § 107, p. 822.

13. [CHIEF INSPECTOR.] § 14. It shall be the duty of the governor to appoint, by and with the advice and consent of the senate, a suitable person, who shall not be a member of the board of trade, and who shall not be interested, either directly or indirectly, in any warehouse in this state, a chief inspector of grain, who shall hold his office for the term of two years, unless sooner removed, as hereinafter provided, for every city in which is located a warehouse of class A. It shall be the duty of such chief inspector of grain to have a general supervision of the inspection of grain, as required by this act or laws of this state, under the advice and immediate direction of the board of commissioners of railroads and warehouses. The said chief inspector shall be authorized to nominate to the commissioners of railroads and warehouses, such suitable persons, in sufficient numbers, as may be deemed qualified for assistant inspectors, who shall not be members of the board of trade, nor interested in any warehouse, and, also, such other employes as may be necessary to properly conduct the business of his office; and the said commissioners are authorized to make such appointments. The chief inspector shall, upon entering upon the duties of his office, be required to take an oath as in other cases of officers, and he shall execute a bond to the People of the State of Illinois, in the penal sum of fifty thousand dollars, with sureties to be approved by the board of commissioners of railroads and warehouses, with a condition therein that he will faithfully and strictly discharge the duties of his said office of inspector according to law, and the rules and regulations prescribing his duties; and that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal or failure to comply with the law, and the rules and regulations aforesaid. And each assistant inspector shall take a like oath, execute a bond in the penal sum of five thousand dollars, with like conditions, and to be approved in like manner as is provided in case of the chief inspector, which said several bonds shall be filed in the office of said commissioners; and suit may be brought upon said bond or bonds in any court having jurisdiction thereof, in the county where the plaintiff or defendant resides, for the use of [the] person or persons injured. The chief inspector of grain, and all assistant inspectors of grain, and other employes in connection therewith, shall

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be governed in their respective duties by such rules and regulations as may be prescribed by the board of commissioners of railroads and warehouses; and the said board of commissioners shall have full power to make all proper rules and regulations from [for] the inspection of grain; and shall, also, have power to fix the rate of charges for the inspection of grain, and the manner in which the same shall be collected; which charges shall be regulated in such a manner as will, in the judgment of the commissioners, produce sufficient revenue to meet the necessary expenses of the service of inspection, and no more. It shall be the duty of the said board of commissioners to fix the amount of compensation to be paid to the chief inspector, assistant inspectors, and all other persons employed in the inspection service, and prescribe the time and manner of their payment. The said board of commissioners of railroads and warehouses are hereby authorized to appoint a suitable person as warehouse registrar, and such assistants as may be deemed necessary to perform the duties imposed upon such registrar by the provisions of this act. The said board of commissioners shall have and exercise a general supervision and control of such appointees; shall prescribe their respective duties; shall fix the amount of their compensation and the time and manner of its payment. Upon the complaint, in writing, of any person, to the said board of commissioners, supported by reasonable and satisfactory proof that any person appointed or employed under the provisions of this section has violated any of the rules prescribed for his government, has been guilty of any improper official act, or has been found inefficient or incompetent for the duties of his position, such person shall be immediately removed from his office or employment by the same authority that appointed him, and his place shall be filled, if necessary, by a new appointment, or, in case it shall be deemed necessary to reduce the number of persons so appointed or employed, their term of service shall cease under the orders of the same authority by which they were appointed or employed. All necessary expenses incident to the inspection of grain, and to the office of registrar, economically administered, including the rent of suitable offices, shall be deemed expenses of the inspection service, and shall be included in the estimate of expenses of such inspection service, and shall be paid from the funds collected for the same. [R. S. 1874, ch. 114, § 108, p 823.

14. [RATES OF STORAGE.] § 15. Every warehouseman of public warehouses of class 'A' shall be required, during the first week in January of each year, to publish in one or more of the newspapers (daily, if there be such,) published in the city in which such warehouse is situated, a table or schedule of rates for the storage of grain in his warehouse during the ensuing year, which rates shall not be increased (except as provided for in section 16 of this act) during the year; and such published rates, or any published reduction of them, shall apply to all grain received into such warehouse from any person or source, and no discrimination shall be made directly or indirectly, for or against any charges made by such warehouseman for the storage of grain. The maximum charge for storage and handling of grain, including the cost of receiving and delivering, shall be, for the first ten days or part thereof, one and one-quarter (1¼) cents per bushel, and for each ten days, or part thereof, after the first ten days

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one-half of one cent per bushel: *Provided, however*, that grain damp, or liable to early damage, as indicated by its inspection when received, may be subject to two cents per bushel storage, for the first ten days, and for each additional five days, or part thereof, not exceeding one-half of one cent per bushel; *Provided, further*, that where grain has been received in any such warehouse prior to the first day of March, 1877, under any express or implied contract to pay and receive rates of storage different from those prescribed by law, or where it has been received under any custom or usage prior to said day to pay or receive rates of storage different from the rates fixed by law, it shall be lawful for any owner or manager of such warehouse to receive and collect such agreed or customary rates. [Laws 1877, p 169.

15. [Loss by Fire, Heating, Etc.] § 16. No public warehouseman shall be held responsible for any loss or damage to property by fire, while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same; nor shall he be held liable for damage to grain by heating, if it can be shown that he has exercised proper care in handling and storing the same, and that such heating or damage was the result of causes beyond his control; and, in order that no injustice may result to the holder of grain in any public warehouse of classes A and B, it shall be deemed the duty of such warehouseman to dispose of, by delivery or shipping, in the ordinary and legal manner of so delivering, that grain of any particular grade which was first received by them, or which has been for the longest time in store in his warehouse; and, unless public notice has been given that some portion of the grain in his warehouse is out of condition, or becoming so, such warehouseman shall deliver grain of quality equal to that received by him, on all receipts as presented. In case, however, any warehouseman of classes A or B shall discover that any portion of the grain in his warehouse is out of condition, or becoming so, and it is not in his power to preserve the same, he shall immediately give public notice, by advertisement in a daily newspaper in the city in which such warehouse is situated, and by posting a notice in the most public place (for such a purpose) in such city, of its actual condition, as near as he can ascertain it; shall state in such notice the kind and grade of the grain, and the bins in which it is stored; and shall also state in such notice the receipts outstanding upon which such grain will be delivered, giving the numbers, amounts and dates of each—which receipts shall be those of the oldest dates then in circulation or uncanceled, the grain represented by which has not previously been declared or receipted for as out of condition, or if the grain longest in store has not been receipted for, he shall so state, and shall give the name of the party for whom such grain was stored, the date it was received, and the amount of it; and the enumeration of receipts and identification of grain so discredited, shall embrace, as near as may be, as great a quantity of grain as is contained in such bins; and such grain shall be delivered upon the return and cancellation of the receipts, and the unreceipted grain upon the request of the owner or person in charge thereof. Nothing herein contained shall be held to relieve the said warehouseman from exercising proper care and vigilance in preserving such grain after such publication of its condition; but such grain shall be kept separate and apart from all direct contact with other grain, and shall not be mixed

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with other grain while in store in such warehouse. Any warehouseman guilty of any act or neglect, the effect of which is to depreciate property stored in the warehouse under his control, shall be held responsible as at common law, or upon the bond of such warehouseman, and in addition thereto, the license of such warehouseman, if his warehouse be of class A, shall be revoked. Nothing in this section shall be so construed as to permit any warehouseman to deliver any grain stored in a special bin, or by itself, as provided in this act, to any but the owner of the lot, whether the same be represented by a warehouse receipt or otherwise. In case the grain declared out of condition, as herein provided for, shall [not] be removed from store by the owner thereof within two months from the date of the notice of its being out of condition, it shall be lawful for the warehouseman where the grain is stored to sell the same at public auction, for account of said owner, by giving ten days' public notice, by advertisement in a newspaper (daily, if there be such) published in the city or town where such warehouse is located. [R. S. 1874, ch. 114, § 110, p. 824.

16. [TAMPERING WITH STORED GRAIN.] § 17. It shall not be lawful for any public warehouseman to mix any grain of different grades together, or to select different qualities of the same grade for the purpose of storing or delivering the same, nor shall he attempt to deliver grain of one grade for another, or in any way tamper with grain while in his possession or custody, with a view of securing any profit to himself or any other person; and in no case, even of grain stored in a separate bin, shall he be permitted to mix grain of different grades together while in store. He may, however, on request of the owner of any grain stored in a private bin, be permitted to dry, clean, or otherwise improve the condition or value of any such lot of grain; but in such case it shall only be delivered as such separate lot, or as the grade it was originally when received by him, without reference to the grade it may be as improved by such process of drying or cleaning. Nothing in this section, however, shall prevent any warehouseman from moving grain while within his warehouse for its preservation or safe keeping. [R. S. 1874, ch. 114, § 111, p. 825.

17. [GRAIN AND SCALES.] § 18. All persons owning property, or who may be interested in the same, in any public warehouse, and all duly authorized inspectors of such property, shall at all times, during ordinary business hours, be at full liberty to examine any and all property stored in any public warehouse in this state, and all proper facilities shall be extended to such person by the warehouseman, his agents and servants, for an examination; and all parts of public warehouses shall be free for the inspection and examination of any person interested in property stored therein, or of any authorized inspector of such property. And all scales used for the weighing of property in public warehouses shall be subject to examination and test by any duly authorized inspector or sealer of weights and measures, at any time when required by any person or persons, agent or agents, whose property has been or is to be weighed on such scales—the expense of such test by an inspector or sealer to be paid by the warehouse proprietor if the scales are found incorrect, but not otherwise. Any warehouseman who may be guilty of continuing to use scales found to be in an imperfect or incorrect condition by such examination and test, until

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the same shall have been pronounced correct and properly sealed, shall be liable to be proceeded against as hereinafter provided. [R. S. 1874, ch. 114, § 112, p. 825.

18. [GRAIN INSPECTOR.] § 19. In all places where there are legally appointed inspectors of grain, no proprietor or manager of a public warehouse of class B shall be permitted to receive any grain and mix the same with the grain of other owners, in the storage thereof, until the same shall have been inspected and graded by such inspector. [R. S. 1874, ch. 114, § 113, p. 826.

19. [ASSUMING TO ACT INSPECTOR.] § 20. Any person who shall assume to act as an inspector of grain, who has not first been so appointed and sworn, shall be held to be an impostor, and shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars for each and every attempt to so inspect grain, to be recovered before a justice of the peace. Any duly authorized inspector of grain who shall be guilty of neglect of duty, or who shall knowingly or carelessly inspect or grade any grain improperly, or who shall accept any money or other consideration, directly or indirectly, for any neglect of duty, or the improper performance of any duty as such inspector of grain; and any person who shall improperly influence any inspector of grain in the performance of his duties as such inspector, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in a sum not less than one hundred nor more than one thousand dollars, in the discretion of the court, or shall be imprisoned in the county jail not less than three nor more than twelve months, or both, in the discretion of the court. [R. S. 1874, ch. 114, § 114, p. 826.

20. [RIGHTS WHEN DISSATISFIED WITH INSPECTION.] § 21. In case any owner or consignee of grain shall be dissatisfied with the inspection of any lot of grain, or shall, from any cause, desire to receive his property without its passing into store, he shall be at liberty to have the same withheld from going into any public warehouse (whether the property may have previously been consigned to such warehouse or not), by giving notice to the person or corporation in whose possession it may be at the time of giving such notice; and such grain shall be withheld from going into store, and be delivered to him, subject only to such proper charges as may be a lien upon it prior to such notice. The grain, if in railroad cars, to be removed therefrom by such owner or consignee within twenty-four hours after such notice has been given to the railroad company having it in possession: *Provided*, such railroad company place the same in a proper and convenient place for unloading; and any person or corporation refusing to allow such owner or consignee to so receive his grain shall be deemed guilty of conversion, and shall be liable to pay such owner or consignee double the value of the property so converted. Notice that such grain is not to be delivered into store may also be given to the proprietor or manager of any warehouse into which it would otherwise have been delivered, and if, after such notice, it be taken into store in such warehouse, the proprietor or manager of such warehouse shall be liable to the owner of such grain for double its market value. [R. S. 1874, ch. 114, § 115, p. 826.

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21. [COMBINATION.] § 22. It shall be unlawful for any proprietor, lessee or manager of any public warehouse, to enter into any contract, agreement, understanding, or combination, with any railroad company or other corporation, or with any inividual or individuals, by which the property of any person is to be delivered to any public warehouse for storage or for any other purpose, contrary to the direction of the owner, his agent, or consignee. Any violation of this section shall subject the offender to be proceeded against as provided in section twenty-three of this act. [R. S. 1874, ch. 114, § 116, p. 826.

22. [SUITS.] § 23. If any warehouseman of class A shall be guilty of a violation of any of the provisions of this act, it shall be lawful for any person injured by such violation to bring suit in any court of competent jurisdiction, upon the bond of such warehouseman, in the name of the People of the State of Illinois, to the use of such person. In all criminal prosecutions against a warehouseman, for the violation of any of the provisions of this act, it shall be the duty of the prosecuting attorney of the county in which such prosecution is brought, to prosecute the same to a final issue, in the name of and on behalf of the People of the State of Illinois. [R. S. 1874, ch. 114, § 117, p. 826.

23. [WAREHOUSE RECEIPTS NEGOTIABLE.] § 24. Warehouse receipts for property stored in any class of public warehouses, as herein described, shall be transferable by the indorsement of the party to whose order such receipt may be issued, and such indorsement shall be deemed a valid transfer of the property represented by such receipt, and may be made either in blank or to the order of another. All warehouse receipts for property stored in public warehouses of class C shall distinctly state on their face the brand or distinguishing marks upon such property. [R. S. 1874, ch. 114, § 118, p. 827.

24. [FALSE RECEIPTS, ETC.] § 25. Any warehouseman of any public warehouse who shall be guilty of issuing any warehouse receipt for any property not actually in store at the time of issuing such receipt, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality, or inspected grade of such property, or who shall remove any property from store (except to preserve it from fire or other sudden danger), without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall, when convicted thereof, be deemed guilty of a crime, and shall suffer, in addition to any other penalties prescribed by this act, imprisonment in the penitentiary for not less than one, and not more than ten years. [R. S. 1874, ch. 114, § 119, p. 827.

25. [COMMON LAW REMEDY SAVED.] § 26. Nothing in this act shall deprive any person of any common law remedy now existing. [R. S. 1874, ch. 114, § 120, p. 827.

26. [POST PRINTED COPY OF ACT.] § 27. All proprietors or managers of public warehouses shall keep posted up at all times, in a conspicuous place in their business offices, and in each of their warehouses, a printed copy of this act. [R. S. 1874, ch. 114, § 121, p. 827.

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27. [REPEAL.] § 28. All acts or part of acts inconsistent with this act are hereby repealed.

AN ACT to amend an act entitled "An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to article thirteen (13) of the constitution of the state," approved April 25, 1871, in force July 1, 1871, and to establish a committee of appeal, and prescribe their duties. In force July 1, 1873,

28. [COMMISSIONERS TO ESTABLISH GRADES.] § 1. That the board of railroad and warehouse commissioners shall establish a proper number and standard of grades for the inspection of grain, and may alter or change the same from time to time: *Provided*, no modification or change of grades shall be made, or any new ones established, without public notice being given of such contemplated change, for at least twenty days prior thereto, by publication in three daily newspapers printed in each city containing warehouses of class A: *And, provided, further*, that no mixture of old and new grades, even though designated by the same name or distinction, shall be permitted while in store. [R. S. 1874, ch. 114, § 123, p. 827.

29. [COMMITTEE OF APPEALS.] § 2. Within twenty days after this act takes effect, the board of railroad and warehouse commissioners shall appoint three discreet and competent persons to act as a committee of appeals, in every city wherein is located a warehouse of class A, who shall hold their office for one year and until their successors are appointed. And every year thereafter, a like committee of appeals shall be appointed by said commissioners, who shall hold their office for one year and until their successors are appointed: *Provided*, said commissioners shall have power, in their discretion, to remove from office any member of said committee at any time, and fill vacancies thus created by the appointment of other discreet persons. [R. S. 1874, ch. 114. § 124, p. 827.

30. [APPEALS—NOTICES.] § 3. In all matters involving doubt on the part of the chief inspector, or any assistant inspector, as to the proper inspection of any lot of grain, or in case any owner, consignee or shipper of grain, or any warehouse manager, shall be dissatisfied with the decision of the chief inspector or any assistant inspector, an appeal may be made to said committee of appeal, and the decision of a majority of said committee shall be final. Said board of commissioners are authorized to make all necessary rules governing the manner of appeals, as herein provided. And all complaints in regard to the inspection of grain, and all notices requiring the services of the committee of appeal, may be served on said committee, or may be filed with the warehouse registrar of said city, who shall immediately notify said committee of the fact, and who shall furnish said committee with such clerical assistance as may be necessary for the proper discharge of their duties. It shall be the duty of said committee, on receiving such notice, to immediately act on and render a decision in each case. [R. S. 1874, ch. 114, § 125, p. 828.

31. [FEES.] § 4. For every case decided by said committee of appeal, they shall be entitled to such fees as may be fixed by the board of railroad and warehouse commissioners, not to exceed three

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dollars for each member of said committee for each case submitted; said fees to be paid either from the inspection fund or by the party taking the appeal, as the commissioners shall direct; and all necessary expenses incurred in carrying out the provisions of this act, except as herein otherwise provided, shall be paid out of the funds collected for the inspection service, on the order of the commissioners. [R. S. 1874, ch. 114, § 126, p. 828.

32. [COLLECTION—INSPECTION FEES.] § 5. No grain shall be delivered from store from any warehouse of class A, for which or representing which warehouse receipts shall have been issued, except upon the return of such receipts, stamped or otherwise plainly marked by the warehouse registrar with the words "registered for collection," and the date thereof; and said board of commissioners shall have power to fix the rates of charges for the inspection of grain, both into and out of warehouses; which charges shall be a lien upon all grain so inspected, and may be collected of the owners, receivers or shippers of such grain, in such manner as the said commissioners may prescribe. [R. S. 1874, ch. 114, § 127, p. 828.

AN ACT to authorize incorporated cities, towns or villages in this state, situated upon the banks of navigable rivers, to lease parts of their public landings or levees. In force July 1, 1874.

33. [WHEN LANDINGS AND LEVEES MAY BE LEASED.] § 1. That whenever, in the opinion of the legislative authority of any incorporated city, or of the president and board of trustees of any incorporated town or village of this state, situate upon the banks of any navigable river, the lands acquired and owned by any such city, town or village, for the purpose of a public landing or public levee, are not immediately required for such purpose, then any such city, town or village may lease such parts of such landing or levee as may be thought best by the legislative authority of such city, or president and board of trustees of such town or village, for the purpose of erecting manufactories, warehouses or grain elevators thereon: *Provided*, no such lease shall extend beyond theperiod of twenty-five years from its execution. [R. S. 1874, ch. 24, § 219, p. 249.

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CHAPTER V.

Railroad and Warehouse Commissioners.

1. Appointment—term.
2. Qualifications.
3. Oath—bond.
4. Compensation—secretary—expenses.
5. Right to pass on trains.
6. Report of railroads.
7. Additional inquiries
8. Applies to officers of roads.
9. Statement by warehousemen.
10. Report by commissioners.
11. Examination of railroads, etc.
12. Cancellation of license
13. Power to examine books, etc.
14. May examine witnesses.
15. Penalty against witnesses.
16. Penalty against railroads.
17. Attorney-General to prosecute suits.
18. In name of the people—pay, etc.
19. Rights saved.

An Act to establish a board of railroad and warehouse commissioners, and prescribe their powers and duties. In force July 1, 1871.

1. [Appointment—Term.] § 1. That a commission, which shall be styled "Railroad and Warehouse Commission," shall be appointed as follows: Within twenty days after this act shall take effect, the governor shall appoint three persons as such commissioners, who shall hold their office until the next meeting of the general assembly, and until their successors are appointed and qualified. At the next meeting of the general assembly, and every two years thereafter, the governor, by and with the advice and consent of the senate, shall appoint three persons as such commissioners, who shall hold their offices for the term of two years from the first day of January in the year of their appointment, and until their successors are appointed and qualified. [R. S. 1874, ch. 114, § 129, p. 828.

2. [Qualifications.] § 2. No person shall be appointed as such commissioner who is at the time of his appointment in any way connected with any railroad company or warehouse, or who is directly or indirectly interested in any stock, bond, or other property of, or is in the employment of any railroad company or warehouseman; and no person appointed as such commissioner shall, during the term of his office, become interested in any stock, bond or other property of any railroad company or warehouse, or in any manner be employed by or connected with any railroad company or warehouse. The governor shall have power to remove any such commissioner at any time, in his discretion. [R. S. 1874, ch. 114, § 130, p. 828.

3. [Oath—Bond.] § 3. Before entering upon the duties of his office, each of the said commissioners shall make and subscribe, and file with the secretary of state, an affidavit, in the following form:

I do solemnly swear (or affirm, as the case may be,) that I will support the constitution of the United States, and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of commissioner of railroads and warehouses, according to the best of my ability.

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And shall enter into bonds, with security to be approved by the governor, in the sum of twenty thousand dollars, conditioned for the faithful performance of his duty as such commissioner. [R. S. 1874, ch. 114, § 131, p. 829.

4. [Compensation—Secretary—Expenses.] § 4. Each of said commissioners shall receive for his services a sum not exceeding thirty-five hundred dollars per annum, payable quarterly. They shall be furnished with an office, office furniture and stationery, at the expense of the state, and shall have power to appoint a secretary to perform such duties as they shall assign to him. Said secretary shall receive for his services a sum not exceeding fifteen hundred dollars per annum. The office of the said commissioners shall be kept at Springfield, and all sums authorized to be paid by this act shall be paid out of the state treasury, and only on the order of the governor: *Provided*, that the total sum to be expended by said commissioners for office rent and furniture and stationery shall, in no case, exceed the total sum of eight hundred dollars per annum. [R. S. 1874, ch. 114, § 132, p. 829.

5. [Right to Pass on Trains.] § 5. The said commissioners shall have the right of passing, in the performance of their duties concerning railroads, on all railroads and railroad trains in this state. [R. S. 1874, ch. 114, § 133, p. 829.

6. [Report of Railroads.] § 6. Every railroad company incorporated or doing business in this state, or which shall hereafter become incorporated, or do business under any general or special law of this state, shall, on or before the first day of September, in the year of our Lord one thousand eight hundred and seventy-one, and on or before the same day in each year thereafter, make and transmit to the commissioners appointed by virtue of this act, at their office in Springfield, a full and true statement, under oath of the proper officers of said corporation, of the affairs of their said corporation, as the same existed on the first day of the preceding July, specifying—

First—The amount of capital stock subscribed, and by whom.

Second—The names of the owners of its stock, and the amounts owned by them respectively, and the residence of each stockholder as far as known.

Third—The amount of stock paid in, and by whom.

Fourth—The amount of its assets and liabilities.

Fifth—The names and place of residence of its officers.

Sixth—The amount of cash paid to the company on account of the original capital stock.

Seventh—The amount of funded debt.

Eighth—The amount of floating debt.

Ninth—The estimated value of the road bed, including iron and bridges.

Tenth—The estimated value of rolling stock.

Eleventh—The estimated value of stations, buildings and fixtures.

Twelfth—The estimated value of other property.

Thirteenth—The length of single main track.

Fourteenth—The length of double main track.

Fifteenth—The length of branches, stating whether they have single or double track.

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Sixteenth—The aggregate length of siding and other tracks not above enumerated.

Seventeenth—The number of miles run by passenger trains during the year preceding the making of the report.

Eighteenth—The number of miles run by freight trains during the same period.

Nineteenth—The number of tons of through freight carried during the same time.

Twentieth—The number of tons of local freight carried during the same time.

Twenty-first—Its monthly earnings for the transportation of passengers during the same time.

Twenty-second—Its monthly earnings for the transportation of freight during the same time.

Twenty-third—Its monthly earnings from all other sources repsectively.

Twenty-fourth—The amount of expense incurred in the running and management of passenger trains during the same time.

Twenty-fifth—The amount of expense incurred in the running and management of freight trains during the same time; also, the expense incurred in the running and management of mixed trains during the same time.

Twenty-sixth—All other expenses incurred in the running and management of the road during the same time, including the salaries of officers, which shall be reported separately.

Twenty-seventh—The amount expended for repairs of road and maintenance of way, including repairs and renewal of bridges and renewal of iron.

Twenty-eighth—The amount expended for improvement, and whether the same are estimated as a part of the expenses of operating or repairing the road, and, if either, which.

Twenty-ninth—The amount expended for motive power and cars.

Thirtieth—The amount expended for station houses, buildings and fixtures.

Thirty-first—All other expenses for the maintenance of way.

Thirty-second—All other expenditures, either for management of road, maintenance of way, motive power and cars, or for other purposes.

Thirty-third—The rate of fare for passengers for each month during the same time, through and way passengers separately.

Thirty-fourth—The tariff of freights, showing each change of tariff during the same time.

Thirty-fifth—A copy of each published rate of fare for passengers and tariff of freight, in force or issued for the government of its agents during the same time.

Thirty-sixth—Whether the rate of fare and tariff of freight in such published lists are the same as those actually received by the company during the same time; if not, what were received.

Thirty-seventh—What express companies run on its roads and on what terms and on what conditions; the kind of business done by them, and whether they take their freights at the depots or at the office of such express companies.

Thirty-eighth—What freight and transportation companies run on its road, and on what terms.

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Thirty-ninth—Whether such freight and transportation companies use the cars of the railroad or the cars furnished by themselves.

Fortieth—Whether the freight or cars of such companies are given any preference in speed or order of transportation, and if so, in what particular.

Forty-first—What running arrangements it has with other railroad companies, setting forth the contracts for the same. [R. S. 1874, ch. 114, § 135, p. 829.

7. [Additional Inquiries.] § 7. The said commissioners may make and propound to such railroad companies any additional interrogatories, which shall be answered by such companies in the same manner as those specified in the foregoing section. [R. S. 1874, ch. 114, § 136, p. 830.

8. [Applies to Officers of Road.] § 8. Sections six and seven of this act shall apply to the president, directors and officers of every railroad company now existing or which shall be incorporated or organized in this state, and to every lessee, manager and operator of any railroad within this state. [R. S. 1874, ch. 114, § 136, p. 830.

9. [Statement by Warehousemen.] § 9. It shall be the duty of every owner, lessee and manager of every public warehouse in this state to furnish, in writing, under oath, at such times as such railroad and warehouse commissioners shall require and prescribe, a statement concerning the condition and management of his business as such warehouseman. [R. S. 1874, ch. 114, § 137, p. 831.

10. [Report by Commissioners.] § 10. Such commissioners shall, on or before the first day of December, in each year, and oftener if required by the governor to do so, make a report to the governor of their doings for the preceding year, containing such facts, statements and explanations as will disclose the actual workings of the system of railroad transportation and warehouse business in their bearings upon the business and prosperity of the people of this state, and such suggestions in relation thereto as to them may seem appropriate, and particularly, first, whether in their judgment the railroads can be classified in regard to the rate of fare and freight to be charged upon them, and if so, in what manner; second, whether a classification of freight can also be made, and if so, in what manner. they shall also, at such times as the governor shall direct, examine any particular subject connected with the condition and management of such railroads and warehouses, and report to him in writing their opinion thereon with their reasons therefor. [R. S. 1874, ch. 114, § 138, p. 831.

11. [Examination of Railroads, etc.] § 11. Said commissioners shall examine into the condition and management, and all other matters concerning the business of railroads and warehouses in this state, so far as the same pertain to the relation of such roads and warehouses to the public, and to the accommodation and security of persons doing business therewith; and whether such railroad companies and warehouses, their officers, directors, managers, lessees, agents and employes, comply with the laws of this state now in force, or which shall hereafter be in force concerning them. And whenever it

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shall come to their knowlege, either upon complaint or otherwise, or they shall have reason to believe that any such law or laws have been or are being violated, they shall prosecute or cause to be prosecuted all corporations or persons guilty of such violation. In order to enable said commissioners efficiently to perform their duties under this act, it is hereby made their duty to cause one of their number, at least once in six months, to visit each county in the state, in which is or shall be located a railroad station, and personally inquire into the management of such railroad and warehouse business. [R. S. 1874, ch. 114, § 139, p. 831.

12. [CANCELLATION OF LICENSE.] § 12. Said commissioners are hereby authorized to hear and determine all applications for the calcellation of warehouse licenses in this state which may be issued in pursuance of any laws of this state, and for that purpose to make and adopt such rules and regulations concerning such hearing and determination as may, from time to time, by them be deemed proper. And if, upon such hearing, it shall appear that any public warehouseman has been guilty of violating any law of this state concerning the business of public warehousemen, said commissioners may cancel and revoke the license of said public warehouseman, and immediately notify the officer who issued such license of such revocation and cancellation; and no person whose license as a public warehouseman shall be canceled or revoked, shall be entitled to another license or to carry on the business in this state of such public warehouseman, until the expiration of six months from the date of such revocation and cancellation, and until he shall have again been licensed: *Provided*, that this section shall not be so construed as to prevent any such warehouseman from delivering any grain on hand at the time of such revocation or cancellation of his said license. And all licenses issued in violation of the provisions of this section shall be deemed null and void. [R. S. 1874, ch. 114, § 140, p 831.

13. [POWER TO EXAMINE BOOKS, ETC.] § 13. The property, books, records, accounts, papers and proceedings of all such railroad companies, and all public warehousemen, shall at all times, during business hours, be subject to the examination and inspection of such commissioners, and they shall have power to examine under oath or affirmation, any or all directors, officers, managers, agents and employes of any such railroad corporation, and any and all owners, managers, lessees, agents and employes of such public warehouses and other persons, concerning any matter relating to the condition and management of such business. [R. S. 1874, ch. 114, § 141, p. 831.

14. [MAY EXAMINE WITNESSES.] § 14. In making any examination as contemplated in this act, or for the purpose of obtaining information, pursuant to this act, said commissioners shall have the power to issue subpœnas for the attendance of witnesses, and may administer oaths. In case any person shall willfully fail or refuse to obey such subpœna, it shall be the duty of the circuit court of any county, upon application af the said commissioners, to issue an attachment for such witness, and compel such witness to attend before the commissioners, and give his testimony upon such matters as shall be lawfully required by such commissioners; and the said court shall have

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power to punish for contempt, as in other cases of refusal to obey the process and order of such court. [R. S. 1874, ch. 114, § 142, p. 832.

15. [PENALTY AGAINST WITNESSES.] § 15. Any person who shall willfully neglect or refuse to obey the process of subpœna issued by said commissioners, and appear and testify as therein required, shall be deemed guilty of a misdemeanor, and shall be liable to an indictment in any court of competent jurisdiction, and on conviction thereof shall be punished for each offense, by a fine of not less than twenty-five nor more than five hundred dollars, or by imprisonment of not more than thirty days, or both, in the discretion of the court before which such conviction shall be had. [R. S. 1874, ch. 114, § 143, p. 832.

16. [PENALTY AGAINST RAILROADS, ETC.] § 16. Every railroad company, and every officer, agent or employe of any railroad company, and every owner, lessee, manager or employe of any warehouse, who shall willfully neglect to make and furnish any report required in this act, at the time herein required, or who shall willfully and unlawfully hinder, delay, or obstruct said commissioners in the discharge of the duties hereby imposed upon them, shall forfeit and pay a sum of not less than one hundred nor more than five thousand dollars for each offense, to be recovered in an action of debt in the name and for the use of the People of the State of Illinois; and every railroad company, and every officer, agent or employe of any such railroad company, and every owner, lessee, manager, or agent or employe of any public warehouse, shall be liable to a like penalty for every period of ten days it or he shall willfully neglect or refuse to make such report. [R. S. 1874, ch. 114, § 144, p. 832.

17. [ATTORNEY GENERAL TO PROSECUTE SUITS.] § 17. It shall be the duty of the attorney general, and the state's attorney in every circuit or county, on the request of said commissioners, to institute and prosecute any and all suits and proceedings which they, or either of them, shall be directed by said commissioners to institute and prosecute for a violation of this act, or any law of this state concerning railroad companies or warehouses, or the officers, employes, owners, operators, or agents of any such companies or warehouses. [R. S. 1874, ch. 114, § 145. p. 832.

18. [IN NAME OF PEOPLE—PAY, ETC.] § 18. All such prosecutions shall be in the name of the People of the State of Illinois, and all moneys arising therefrom shall be paid into the state treasury by the sheriff or other officer collecting the same; and the state's attorney shall be entitled to receive for his compensation, from the state treasury, on bills to be approved by the governor, a sum not exceeding ten per cent. of the amount received and paid into the state treasury as aforesaid: *Provided*, this act shall not be construed so as to prevent any person from prosecuting any *qui tam* action as authorized by law, and of receiving such part of the amount recovered in such action as is or may be provided under any law of this State. [R. S. 1874, ch. 114, § 146, p. 832.

19. [RIGHTS SAVED.] § 19. This act shall not be so construed as to waive or affect the right of any person, injured by the violation of

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any law in regard to railroad companies or warehouses, from prosecuting for his private damages in any manner allowed by law. [R. S. 1874, ch. 114, § 147, p. 832.

CHAPTER VI.

REVENUE.

1. Property assessed and taxed.
2. Personal property—How valued.
3. Real property—How valued.
4. When personal property listed.
5. Who shall list and what listed.
6. Where listed and assessed.
7. Personal property of corporations.
8. Schedule.
9. Form of schedule.
10. Assessor examine under oath—When.
11. Listing credits.
12. What debts not deducted.
13. Oath—Perjury—Fines.
14. Capital stock of corporations.
15. Scheduled statements.
16. List franchises.
17. Listing property of railroads.
18. Time and form of schedule.
19. Right of way.
20. How railroad track listed.
21. Rolling stock.
22. How rolling stock listed.
23. Tools and materials.
24. How other property assessed.
25. Railroad returns to Auditor.
26. Neglect to return.
27. State Board of Equalization.
28. Record book for railroad property.
29. Description of land plats.
30. Returns of telegraph companies.
31. Board to assess—Tax how collected.
32. Office furniture, etc.
33. False schedule—Penalty.
34. Perjury.
35. Government lands.
36. When assessor to fix value.
37. County board—Equalization.
38. Clerk's report to Auditor.
39. Property to be classified by state board.
40. Capital stock of associations.
41. Railroad property.
42. Capital stock of railroads, etc.
43. Rates extended by county clerks.
44. Distress for taxes.
45. Abstracts—Illinois Central Railroad.
46. Border bridges how assessed.
47. Sale of bridges, etc.
48. Property to be assessed.

AN ACT for the assessment of property and for the levy and collection of taxes. In force July 1, 1872.

1. [PROPERTY ASSESSED AND TAXED.] § 1. That the property named in this section shall be assessed and taxed, except so much thereof as may be, in this act, exempted:

First—All real and personal property in this state.

Second—All moneys, credits, bonds or stocks and other investments, the shares of stock of incorporated companies and associations, and all other personal property, including property *in transitu* to or from this state, used, held, owned or controlled by persons residing in this state.

Fourth—The capital stock of companies and associations incorporated under the laws of this state. [R. S. 1874, ch. 120, p. 857. See const. Art. 9, § 1.

2. [PERSONAL PROPERTY HOW VALUED.] § 3. Personal property shall be valued as follows:

Fourth—The capital stock of all companies and associations now or hereafter created under the laws of this state, shall be so valued by the state board of equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association. Said board shall adopt such rules and prin-

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ciples for ascertaining the fair cash value of such capital stock as to it may seem equitable and just; and such rules and principles, when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however to such change, alteration or amendment as may be found, from time to time, to be necessary by said board: *Provided*, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of the capital stock of any such company and association shall not be assessed or taxed in this state. This clause shall not apply to the capital stock or shares of capital stock of banks organized under the general banking laws of this state: *Provided, further*, that in assessing companies and associations organized for purely manufacturing purposes, or for printing, or for publishing of newspapers, or for the improving and breeding of stock, the assessment shall be so made that such companies or associations so organized shall only be assessed as individuals under like circumstances would be assessed, and no more; and such companies and associations shall be allowed the same deductions as are allowed to individuals. [Laws 1875, p. 35. See Const. Art. 9, § 1.

3. [REAL PROPERTY—HOW VALUED.] § 4. Real property shall be valued as follows:

First—Each tract or lot of real property shall be valued at its fair cash value, estimated at a price it would bring at a fair, voluntary sale.

Third—When a building or structure is located on the right of way of any canal, railroad or other company leased or granted for a term of years to another, the same shall be valued at such a price as such building or structure and lease or grant would sell at a fair, voluntary sale for cash.

Fourth—In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair, voluntary sale for cash. [R. S. 1874, ch. 120, § 4, p. 858.

4. [WHEN PERSONAL PROPERTY LISTED.] § 5. Personal property shall be listed between the first day of May and the first day of July of each year, when required by the assessor, with reference to the quantity held or owned on the first day of May, in the year for which the property is required to be listed. Personal property purchased or acquired on the first day of May shall be listed by or for the person purchasing or acquiring it. [R. S. 1874, ch. 120, § 5, p. 858.

5. [WHO SHALL LIST, AND WHAT LISTED.] § 6. Personal property shall be listed in the manner following:

First—Every person of full age and sound mind, being a resident of this state, shall list all his moneys, credits, bonds or stocks, shares of stock of joint stock or other companies (when the capital stock of such company is not assessessed in this state,) moneys loaned or invested, annuities, franchises, royalties, and other personal property.

Second—He shall also list all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited, subject to his order,

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check or draft, and credits due from or owing from any person or persons, bodies corporate or politic.

Seventh—The property of corporations whose assets are in the hands of receivers, by such receivers. [R. S. 1874, ch. 120, § 6, pp. 858, 859.

6. [WHERE LISTED AND ASSESSED.] § 7. Personal property, except such as is required in this act to be listed and assessed otherwise, shall be listed and assessed in the county, town, city, village or district where the owner resides. The capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed and taxed in the county, town, district, city or village where the principal office or place of business of such corporation or person is located in this state. If there be no principal office or place of business in this state, then at the place in this state where any such corporation or person transacts business. [R. S. 1874, ch. 120, § 7, p. 859.

7. [PERSONAL PROPERTY OF CORPORATIONS.] § 13. * * * All persons, companies and corporations in this state owning steamboats, sailing vessels, wharf boats, barges and other water craft, shall be required to list the same for assessment and taxation in the county, town, city, village or district in which the same may belong or be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. [R. S. 1874, ch. 120, § 13, p. 859.

8. [SCHEDULE] § 24. Persons required to list personal property shall make out and deliver to the assessor, at the time required, a schedule of the numbers, amounts, quantity and quality of all personal property in their possession, or under their control, required to be listed for taxation by them. It shall be the duty of the assessor to determine and fix the fair cash value of all items of personal property. [R. S. 1874, ch. 120, § 24, p. 860.

9. [FORM OF SCHEDULE.] § 25. Such schedule, when completed by the assessor in extending in a separate column the value of such property, shall truly and distinctly set forth:

Sixth—Every steam engine, including boilers, and the value thereof.

Fourteenth—Every franchise, the description and the vale thereof.

Seventeenth—Every steamboat, sailing vessel, wharf boat, barge or other water craft, and the value thereof.

Nineteenth—The value of material and manufactured articles on hand.

Twentieth—The value of manufacturers' tools, implements and machinery (other than boilers and engines, which shall be listed as such).

Twenty-eighth—The amount and value of bonds or stocks.

Twenty-ninth—The amount and value of shares of capital stock of companies and associations not incorporated by the laws of this state.

Thirty-first—The value of property of companies and corporations other than property hereinbefore enumerated.

Thirty-second—The value of bridge property.

Thirty-third—The value of property of saloons and eating-houses.

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Thirty-fourth—The value of household or office furniture and property.

Thirty-sixth—The value of all other property required to be listed. [R. S. 1874, ch. 120, § 25, p. 861.

10. [ASSESSOR EXAMINE UNDER OATH—WHEN.] § 26. That whenever the assessor shall be of opinion that the person listing property for himself or for any other person, company or corporation, has not made a full, fair and complete schedule of such property, he may examine such person under oath in regard to the amount of the property he is required to schedule, and for that purpose he is authorized to administer oaths; and if such person shall refuse to answer under oath and a full discovery make, the assessor may list the property of such person or his principal, according to his best judgment and information. If the person so examined shall swear falsely, he shall be guilty of perjury, and punished accordingly. [R. S. 1874, ch. 120, § 26 p. 861. See § 36.

11. [LISTING CREDITS.] § 27. In making up the amount of credits which any person is required to list for himself, or for any other person, company or corporation, he shall be entitled to deduct from the gross amount of credits the amount of all *bona fide* debts owing by such person, company or corporation, to any other person, company or corporation, for a consideration received; but no acknowledgment of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be deducted as the person making out the statement believes he is legally and equitably bound, and will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other sureties who are able to contribute, then only so much as the surety in whose behalf the statement is made will be bound to contribute: *Provided*, that nothing in this section shall be so construed as to apply to any bank, company or corporation exercising banking powers or privileges, or to authorize any deductions allowed by this section from the value of any other item of taxation than credits. [R. S. 1874, ch. 120, § 27, p. 862.

12. [WHAT DEBTS NOT DEDUCTED.] § 28. No person, company or corporation shall be entitled to any deduction from the amount of any bonds, stocks, or money loaned, or on account of any bond, note or obligation of any kind, given to any insurance company on account of premiums or policies, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated. [R. S. 1874, ch. 120, § 28, p. 862.

13. [OATH—PERJURY—FINES.] § 29. In all cases where deductions are claimed from credits, the assessor shall require that such deductions be verified by the oath of the person, officer or agent claiming the same; and any such person, officer or agent, knowingly or willfully making a fraudulent statement of such deductions claim-

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ed, so verified by affidavit, shall be liable to a fine of not less than one hundred dollars nor more than one thousand dollars, in addition to all damages sustained by the state, county or other local corporation, to be recovered in any proper form of action in any court of competent jurisdiction, in the name of the People of the State of Illinois. Such fines, when recovered, shall be paid into the county treasury, and the damages, when collected, shall be paid to whom they belong. The assessor shall preserve the statement of deductions thus claimed, so verified by affidavit, and when he returns the assessment books shall file the same with the county clerk, to be kept on file in his office for two years, and at the expiration of such time said statement of deductions shall be destroyed by said clerk, but, in the meantime, shall be subject only to the inspection of the offices charged with the execution of this law. [R. S. 1874, ch. 120, § 29, p. 862.

14. [CAPITAL STOCK OF CORPORATIONS] § 32. Banking, bridge, express, ferry, gravel road, gas, insurance, manufacturing, mining, plank road, savings bank, stage, steamboat, street railroad, transportation, turnpike and all other companies and associations incorporated under the laws of this state, (other than banks organized under the general banking laws of this state), shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly—

First—The name and location of the company or association.

Second—The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third—The amount of capital stock paid up.

Fourth—The market value, or if no market value, then the actual value of the shares of stock.

Fifth—The total amount of all indebtedness, except the indebtedness for current expenses—excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth—The assessed valuation of all its tangible property. Such schedule shall be made in conformity to such instruction and forms as may be prescribed by the auditor of public accounts. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information which he can obtain. [R. S. 1874, ch. 120, § 32, p. 863.

15. [SCHEDULE STATEMENTS.] § 33. Such statements shall be scheduled by the assessor; and such schedule, with the statements so scheduled, shall be returned by the assessor to the county clerk. Said clerk shall, at the time he makes his report of assessment, forward to the auditor all such schedules and statements so returned to him. The auditor shall, annually, on the meeting of the state board of equalization, lay before said board the schedules and statements herein required to be returned to him; and said board shall value and assess the capital stock of such companies or associations, in the manner provided in this act. [R. S. 1874, ch. 120, § 33, p. 863.

16. [LIST FRANCHISES.] § 34. Every person owning or using a franchise granted by any law of this state, shall, in addition to his

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other property, list the same as personal property, giving the total value thereof. [R. S. 1874, ch. 120, § 34, p. 864.

17. [Listing Property of Railroads.] § 40. Every person, company or corporation owning, operating or constructing a railroad in this state, shall return sworn lists or schedules of the taxable property of such railroad, as hereinafter provided. Such property shall be listed and assessed with reference to the amount, kind and value on the first day of May of the year in which it is listed. [R. S. 1874, ch. 120, § 40, p. 865.

18. [Time and form of Schedule.] § 41. They shall, in the month of May of the year eighteen hundred and seventy-three, and at the same time in each year thereafter when required, make out and file with the county clerks of the respective counties in which the railroad may be located, a statement or schedule showing the property held for right of way, and the length of the main and all side and second tracks and turnouts in such county, and in each city, town and village in the county, through or into which the road may run, and describing each tract of land, other than a city, town or village lot, through which the road may run, in accordance with the United States surveys, giving the width and length of the strip of land held in each tract, and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way. New companies shall make such statement in May next after the location of their roads. When such statement shall have been once made, it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the county board; but the company shall, during the month of May, annually, report the value of such property, by the description set forth in the next section of this act, and note all additions or changes in such right of way, as shall have occurred. [R. S. 1874, ch. 120, § 41, p. 865.

19. [Right of Way.] § 42. Such right of way, including the superstructures of main, side or second track and turnouts, and the station and improvements of the railroad company on such right of way, shall be held to be real estate for the purposes of taxation, and denominated "railroad track," and shall be so listed and valued; and shall be described in the assessment thereof as a strip of land extending on each side of such railroad track, and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses the boundary line in entering the county, city, town or village, and extending to the point where such track crosses the boundary line leaving such county, city, town or village, or to the point of termination in the same, as the case may be, containing——acres, more or less, (inserting name of county, township, city, town or village boundary line of same, and number of acres, and length in feet,) and when advertised or sold for taxes, no other description shall be necessary. [R. S. 1874, ch. 120, § 42, p. 865.

20. [How Railroad Track Listed.] § 43. The value of the "railroad track" shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length

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of the main track in such county, town, village, district or city bears to the whole length of the road in this state, except the value of the side or second track, and all turnouts and all station houses, depots, machine shops, or other buildings belonging to the road, which shall be taxed in the county, town, village, district or city in which the same are located. [R. S. 1874, ch. 120, § 43, p. 865.

21. [ROLLING STOCK.] § 44. The moveable property belonging to a railroad company shall be held to be personal property, and denominated, for the purpose of taxation, "rolling stock." Every person, company or corporation, owning, constructing or operating a railroad in this state, shall, in the month of May, annually, return a list or schedule, which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping and dining cars, express cars, baggage cars, house cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars, and all other kinds of cars. [R. S. 1874. ch. 120, § 44, p. 865.

22. [HOW ROLLING STOCK LISTED.] § 45. The rolling stock shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track, used or operated in such county, town, village, district or city bears to the whole length of the road used or operated by such person, company or corporation, whether owned or leased by him or them in whole or in part. Said list or schedule shall set forth the number of miles of main track on which said rolling stock is used in the state of Illinois, and the number of miles of main track on which said rolling stock is used elsewhere. [R. S. 1874, ch. 120, § 45, p. 866.

23. [TOOLS AND MATERIALS.] § 46. The tools and materials for repairs, and all other personal property of any railroad, except "rolling stock," shall be listed and assessed in the county, town, village, district or city wherever the same may be on the first day of May. All real estate, including the stations and other buildings and structures thereon, other than that denominated "railroad track," belonging to any railroad, shall be listed as lands or lots, as the case may be, in the county, town, village, district or city where the same are located. [R. S. 1874, ch. 120, § 46, p. 866.

24. [HOW OTHER PROPERTY ASSESSED.] § 47. The county clerk shall return to the assessor of the town or district, as the case may require, a copy of the schedule or list of the real estate (other than "railroad track") and of the personal property (except "rolling stock"), pertaining to the railroad; and such real and personal property shall be assessed by the assessor. Such property shall be treated in all respects, in regard to assessment and equalization, the same as other similar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms "lands," "lots" and "personal property." [R. S. 1874, ch. 120, § 47, p. 866.

25. [RAILROAD RETURNS TO AUDITOR.] § 48. At the same time that the lists or schedules are hereinbefore required to be returned to the county clerks, the person, company or corporation running, oper-

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ating or constructing any railroad in this state, shall return to the Auditor of Public Accounts sworn statements or schedules, as follows:

First—Of the property denominated "railroad track," giving the length of the main and side or second tracks and turnouts, and showing the proportions in each county, and the total in the state.

Second—The "rolling stock," giving the length of the main track in each county, the total in this state, and the entire length of the road.

Third—Showing the number of ties in track per mile, the weight of iron or steel per yard, used in main and side tracks; what joints or chairs are used in track, the ballasting of road, whether graveled or dirt, the number and quality of buildings or other structures on "railroad track," the length of time iron in track has been used, and the length of time the road has been built.

Fourth—A statement or schedule showing:

1. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.
2. The amount of capital stock paid up.
3. The market value, or if no market value, then the actual value, of the shares of stock.
4. The total amount of all indebtedness, except for current expenses for operating the road.
5. The total listed valuation of all its tangible property in this state.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of Public Accounts. [R. S. 1874, ch. 120, § 48, p. 866.

26. [Neglect to Return.] § 49. If any person, company or corporation, owning, operating or constructing any railroad, shall neglect to return to the county clerks the statements or schedules required to be returned to them, the property so to be returned and assessed by the assessor shall be listed and assessed as other property. In case of failure to make returns to the auditor, as hereinbefore provided, the auditor, with the assistance of the county clerks and assessors, when he shall require such assistance, shall ascertain the necessary facts and lay the same before the State Board of Equalization. In case of failure to make said statements, either to the county clerk or auditor, such corporation, company or person shall forfeit, as a penalty, not less than one thousand nor more than ten thousand dollars for each offense, to be recovered in any proper form of action, in the name of The People of the State of Illinois, and paid into the state treasury. [R. S. 1874, ch. 120, § 49, p. 866.

27. [State Board Equalization.] § 50. The Auditor shall annually, on the meeting of the State Board of Equalization, lay before said board the statements and schedules herein required to be returned to him; and said board shall assess such property in the manner hereinafter provided. [R. S. 1874, ch. 120, § 50, p. 867.

28. [Record Book for Railroad Property.] § 51. The county clerk shall procure, at the expense of the county, a record book, properly ruled and headed, in which to enter the railroad property of all kinds, as listed for taxation, and shall enter the valuations as assessed, corrected and equalized, in the manner provided by this act; and against such assessed, corrected and equalized valuation, as the case

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may require, the county clerk shall extend all the taxes thereon for which said property is liable. And at the proper time fixed by this act for delivering tax books to the county collector, the clerk shall attach a warrant, under his seal of office, and deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes therein charged against railroad property, any pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and be filed in the office of the county clerk for future use. [R. S. 1874, ch. 120, § 51, p. 867.

29. [DESCRIPTION OF LAND PLATS.] § 52. When any railroad company shall make or record a plat of any contiguous lots or parcels of land belonging to it, the same may be described as designated on such plat. [R. S. 1874, ch. 120, § 52, p. 867.

30. [RETURNS OF TELEGRAPH COMPANIES.] § 53. Any person, company or corporation, using or operating a telegraph line in this state, shall, annually, in the month of May, return to the auditor of public accounts a schedule or statement, as follows:

First—The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Second—The amount of capital stock paid up.

Third—The market value, or if no market value, then the actual value of the shares of stock.

Fourth—The total amount of all indebtedness, except current expenses, for operating the line.

Fifth—The length of line operated in each county, and the total in the state.

Sixth—The total assessed valuation of all its tangible property in this state.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts, and with reference to amounts and values on the first day of May of the year for which the return is made. [R. S. 1874, ch. 120, § 53, p. 867.

31. [BOARD TO ASSESS—TAX HOW COLLECTED.] § 54. The auditor shall annually, on the meeting of the state board of equalization, lay before said board the statement or schedule herein required to be returned to him; and said board shall assess the capital stock of such telegraph company, in the manner hereinafter provided. The tax charged on the capital stock of telegraph companies shall be placed in the hands of county collectors, in a book provided for that purpose, the same as is required of railroad property, and may be included in the same book with railroad property. [R. S. 1874, ch. 120, § 54, p. 867.

32. [OFFICE FURNITURE, ETC.] § 55. The office furniture and other personal property of telegraph companies shall be listed and assessed in the county, town, district, village or city where the same is used or kept. [R. S. 1874, ch. 120, § 55, p. 867.

33. [FALSE SCHEDULE—PENALTY.] § 56. If any person or corporation shall give a false or fraudulent list, schedule or statement, required by this act, or shall fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this act, he or it shall be liable

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to a penalty of not less than ten dollars nor more than two thousand, to be recovered in any proper form of action, in the name of the People of the State of Illinois, on the complaint of any person. Such fine, when collected, to be paid into the county treasury. [R. S. 1874, ch. 120, § 56, p. 868.

34. [PERJURY.] § 57. Whoever shall wilfully make a false list, schedule or statement, under oath, shall, in addition to the penalty provided in the preceding section, be liable as in the case of perjury. [R. S. 1874, ch. 120, § 57, p. 868.

35. [GOVERNMENT LANDS.] § 61. Government lands entered or located on or prior to the first day of May, shall be taxable for that year, and annually thereafter. School lands and lots sold shall be taxable in like manner as government lands. Lands and lots sold by the trustees of the Illinois and Michigan canal shall be taxable from and after the time the full payment thereof is made. Illinois Central railroad lands and lots shall be taxable from and after the time the last payment becomes due. Swamp lands and lots shall become taxable whenever the county sells, conveys, or agrees to convey its title: *Provided*, that canal, Illinois Central railroad and swamp lands and lots shall be, in other respects, governed, as to the time of becoming taxable, the same as government lands. [R. S. 1874, ch. 120, § 61, p. 868.

36. [WHEN ASSESSOR TO FIX VALUE.] § 83. In all cases of failure to obtain a statement of personal property, from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property, and assess the same as he believes to be the fair amount and value thereof. [R S. 1874, ch. 120, p. 871. See § 10.

37. [COUNTY BOARD—EQUALIZATION.] § 97. The county board, at a meeting to be held for the purpose contemplated in this section, on the second Monday in July, annually, after the return of the assessment books, shall—

Fourth—It shall ascertain whether the valuations in one town or district bear just relation to all the towns or districts in the county; and may increase or diminish the aggregate valuation of property in any town or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of property in the county, but shall, in no instance, reduce the aggregate valuation of all the towns or districts below the aggregate valuation thereof, as made by the assessors; neither shall it increase the aggregate valuation of all the towns or districts, except in such an amount as may be actually necessary and incidental to a proper and just equalization. It may consider lands, town or city lots, personal property, and railroad property (except "railroad track" and "rolling stock,") separately, and determine a separate rate per cent. of addition or reduction for each of said classes of property, as may be necessary to a just equalization of the assessed value of said classes of property within the respective towns, and of the same between the several towns or districts in the county. If the county board of any county shall find the aggregate assessment of the county is too high or too low, or is generally so unequal as to render it impracticable to equalize such assessment fairly, they may set aside the assessment of the whole county or of any township or townships

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therein, and order a new assessment, with instructions to the assessors to increase or diminish the aggregate assessment of such county or township, as the case may be, by such an amount as said board may deem right and just in the premises, and consistent with this act. [R. S. 1874, ch. 120, § 97, p 873.

38. [CLERKS' REPORT TO AUDITOR.] § 98. On or before the tenth day of July, annually, it shall be the duty of county clerks, upon the receipt of the assessment books, to make out and transmit to the auditor an abstract of the assessment of property, showing the number, value and average value of each kind of enumerated property, as shown by the assessment; the value of each item of unenumerated property, and total value of personal property; the length of main track, the length of side track, and the numbers, values and average values of each separate item of railroad property; the number of acres, value and average value of improved lands; the number of acres, value and average value of unimproved lands; the total number of acres, total value and average value, per acre, of all lands; the number, value and average value of improved town or city lots; the number, value and average value of unimproved town or city lots; the total number of lots, total value and average value of all lots; and the total value of all property; the number of acres in cultivation of wheat, corn, oats, meadow, and other field products in inclosed pasture, orchards and woodland, whether inclosed or not in that year. Said abstract shall be made out on blanks, which it shall be the duty of the auditor to furnish the county clerks for that purpose. The values to be given in said abstract shall be the assessed valuations, except in the case of railroad property denominated "railroad track" and "rolling stock," the value of which shall be given as returned by the railroad company to the county clerk. The county clerk shall, at the same time, and accompanying said abstract, furnish a detailed statement of the railroad property denominated "railroad track" and "rolling stock," reported by each road located in or through their counties. If there are any roads so located that have not made their reports as required by this act, the clerk shall report the fact, giving the name of such railroad. [R. S. 1874, ch. 120, § 98, p. 874.

39. [PROPERTY TO BE CLASSIFIED BY STATE BOARD.] § 106. Said board, in equalizing the valuation of property as listed and assessed in the different counties, shall consider the following classes of property separately, viz: personal property, railroad and telegraph property; lands, and town and city lots; and, upon such consideration, determine such rates of addition to or deduction from the listed or assessed valuation of each of said classes of property in each county, or to or from the aggregate assessed value of each of said classes in the state, as may be deemed by the board to be equitable and just—such rates being in all cases even and not fractional; and such rates, as finally determined by said board, shall not be combined. [R. S. 1874, ch. 120, § 106, p. 875.

40. [CAPITAL STOCK OF ASSOCIATIONS.] § 108. The State Board of Equalization shall assess the capital stock of each company or association, respectively, now or hereafter incorporated under the laws of this state, in the manner hereinbefore in this act provided. The re-

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spective assessments so made (other than of the capital stock of railroad and telegraph companies) shall be certified by the auditor, under direction of said board, to the county clerk of the respective counties in which such companies or associations are located, and said clerk shall extend the taxes for all purposes on the respective amounts so certified the same as may be levied on the other property in such towns, districts, villages or cities in which such companies or associations are located. [R. S. 1874, ch. 120, § 108, p. 875.

41. [RAILROAD PROPERTY.] § 109. Said board shall also assess the railroad property denominated in this act as "railroad track" and "rolling stock;" and said board is hereby given the power and authority, by committee or otherwise, to examine persons and papers. The amount so determined and assessed shall be certified by the auditor to the county clerks of the proper counties. The county clerk shall, in like manner, distribute the value, so certified to him by the auditor, to the county and to the several towns, districts, villages and cities in his county entitled to a proportionate value of such "railroad track" and "rolling stock." And said clerk shall extend taxes against such values, the same as against other property in such towns, districts, villages and cities. [R. S. 1874, ch. 120, § 109, p. 876.

42. [CAPITAL STOCK—RAILROADS—TELEGRAPHS.] § 110. The aggregate amount of capital stock of railroad or telegraph companies assessed by said board shall be distributed proportionately by said board to the several counties in like manner that the property of railroads denominated "railroad track" is distributed. The amount so determined shall be certified by the auditor to the county clerk of the proper counties. The county clerk shall, in like manner, distribute the value, so certified to him by the auditor, to the county and to the several towns, districts, villages and cities in his county entitled to a proportionate value of such capital stock. And said clerk shall extend taxes against such values the same as against other property in such towns, districts, villages and cities. [R. S. 1874, ch. 120, § 110, p. 876.

43. [RATES EXTENDED BY COURT CLERKS.] § 126. Said clerks shall extend the rates of addition or deduction ordered by the county board and state board of equalization, in the several columns provided for that purpose. The rates per cent. ordered by the state board of equalization shall be extended on the assessed valuation of property, as corrected and equalized by the county board—except that in the case of railroad property denominated "railroad track" and "rolling stock," said rates shall be extended on the listed valuation of such designated property. In all cases of extension of valuations, where the equalized valuation shall happen to be fractional, the clerk shall reject all such fractions as may fall below fifty cents; fractions of fifty cents or more shall be extended as one dollar. [R. S. 1874, ch. 120, § 126, p. 878.

44. [DISTRESS FOR TAXES.] § 156. In case any person, company or corporation shall refuse or neglect to pay the taxes imposed on him or them, when demanded, it shall be the duty of the collector to levy the same, together with the costs and charges that may accrue, by

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distress and sale of the personal property of the person, company or corporation who ought to pay the same. [R. S. 1874, ch. 120, § 156, p. 884.

45. [ABSTRACTS—ILLINOIS CENTRAL RAILROAD.] § 272. On the first day of May, in each year, or as soon thereafter as practicable, the auditor shall obtain from the United States land office in this state abstracts of the lands entered and located, and not previously obtained, and shall, at the same time, obtain from the Illinois Central railroad, and canal offices, abstracts of the Central railroad and canal lands sold. Upon the receipt of said abstracts, the auditor shall cause them to be transcribed into the tract books in his office, and shall, without delay, cause abstracts of the lands in each county, including school lands reported to his office as having been sold, to be made out and forwarded by mail to the county clerks of the several counties; and said clerks shall cause such abstracts to be transcribed into the tract book, and filed in their office. The expense of procuring and furnishing the abstracts required by this section, shall be paid by the auditor out of the appropriation for the expenses of his office. [R. S. 1874, ch. 120, § 272, p. 903.

AN ACT to provide for the assessment and taxation of bridges across navigable waters on the borders of this state. In force May 1, 1873.

46. [BORDER BRIDGES — HOW ASSESSED.] § 1. That all structures across any navigable streams forming the boundary line between the state of Illinois and any other state, shall be assessed by the township or other assessor in the county or township where the same is located, as real estate; and all provisions of law relating to the assessment and taxation of real estate, shall apply to the assessment and taxation of such bridges. Such assessor shall give in his description the quarter section, section, township and range in which such bridge is located or terminates in this state, together with the metes and bounds of the ground occupied by such bridge, and the approaches thereto from the end on the Illinois shore to the center of the main channel of the stream crossed by the same. For the purpose of obtaining such description the assessor may employ a competent surveyor, and the expense of making such survey and description shall be charged as a tax against such property by the county clerk, on the certificate of the surveyor: *Provided*, that one survey of any bridge and approaches, made under this act, shall be deemed sufficient for the purpose of subsequent assessment of such bridge or approaches. [R. S. 1874, ch. 120, § 295, p. 907.

47. [SALE OF BRIDGE, ETC.] § 2. In default of the payment of any such tax assessed against any such bridge company, as aforesaid, such bridge structure, and approaches thereto, so far as the same are located within this state, together with the land on which the same is located, as described by the Assessor, and the franchise belonging thereto, shall be sold for such tax at the same time and in the same manner as other real estate shall be sold in such county for delinquent tax; and any county, city, town, school district, or other municipal corporation, interested in the collection of the tax levied upon such bridge,

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may become the purchaser at such sale, or at any sale of such property under judgment recovered upon, or to enforce the collection of such tax; and if the property, so sold, is not redeemed, may acquire, hold, sell and dispose of the title thereto. [Laws 1877, § 2, p. 171.

AN ACT in regard to the assessment of property, and the levy and collection of taxes by incorporated cities in this state. In force July 1, 1873.

48. [PROPERTY TO BE ASSESSED.] § 3. The assessor shall assess all taxable real and personal estate at its real or true value, as defined by the state revenue laws. All personal property, of every nature and kind, having its actual *situs* within the city, shall be assessed for municipal purposes, whether the owner resides in the city or not; this provision to extend to and include the property of railroads and the proportion of rolling stock of all such railroads or railway companies as run cars or trains into the city, by lease of road bed or track, the same as though such companies owned the track or road bed; such railroad property to be assessed, and such proportion to be ascertained and apportioned in accordance, as near as may be, with the statutes regulating the manner of listing and valuing the property of railroads for state and county taxation. [R. S. 1874, ch. 24, § 251, p. 255.

CHAPTER VII.

CRIMINAL CODE.

1. Burglary—punishment.
2. Malicious mischief to railroads.
3. Penalty for burning warehouse, etc.
4. Bringing to State Canada thistles.
5. Railroads to destroy thistles.
6. Common carrier.
7. Cruelty to animals.
8. Embezzlement by officers of corporation.
9. Of railroad tickets.
10. Indictment.
11. Of records, writings, etc.
12. Incorporation taken for granted—embezzlement.
13. Counterfeiting seals.
14. Fraudulent stock.
15. Signing with intent to issue.
16. Fraudulent receipts—warehouseman.
17. Issuing by warehousemen and others.
18. Gambling in grain.
19. Combining to injure railroads.
20. Obstructing trains, etc.
21. Attempting injury to railroads.
22. Influencing others.
23. Railroad engines, etc.
24. Injuring baggage.
25. Withholding funds.
26. Assuming corporate name.
27. Circulating obscene books.
28. Depositing with common carrier.
29. Property of railroad company.
30. Offense on railroad cars.
31. Catttle when not to be brought into State.
32. When ownership unlawful.
33. Penalties—possession.
34. Joint and several liability.
35. What not a defence.
36. What cattle meant—evidence.
37. Engineer not to abandon engine.
38. Obstructing railroad business.
39. Conspiracy to impede business.
40. Construction of this act.
41. Coloring grain.
42. Not to be on sale.
43. Penalty.
44. How fines collected.

AN ACT to amend section 36 of an act entitled "An act to revise the law in relation to criminal jurisprudence," approved March 27, 1874. In force July 1, 1877.

1. [BURGLARY—PUNISHMENT.] Section 1. § 36. Whoever willfully and maliciously and forcibly breaks and enters, or willfully and maliciously, without force (the doors and windows being open), enters

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into any dwelling house, kitchen, office, shop, storehouse, warehouse, malt house, stilling house, mill, pottery, factory, wharfboat, steamboat or other water craft, freight or passenger railroad car, church, meeting house, school house, or other building. with intent to commit murder, robbery, rape, mayhem, or other felony, or larceny, shall be deemed guilty of burglary, and be imprisoned in the penitentiary for a term not less than one year, nor more than twenty years. [Laws 1877, sec. 1, p. 85.

AN ACT to amend an act entitled "An act to revise the law in relation to criminal jurisprudence." In force July 1, 1877.

2. [MALICIOUS MISCHIEF TO RAILROADS.] Section 1. § 186. Whoever willfully and maliciously displaces or removes any switch, signal or rail of any railroad, or breaks down, or rips up, injures or destroys any track, bridge or other portion of any railroad, or places any obstructions thereon, or places any false signal upon or along the line of any railroad track, or does any act to or with an engine, machine or car of such railroad, with the intent to obstruct or prevent the use and operation of such railroad, or with the intent that any person or property being or passing on or over such railroad should be injured thereby, shall be imprisoned in the penitentiary not less than one nor more than five years. Or if, in consequence of any such act, done with such intent, any person being or passing on or over such railroad, suffers any bodily harm, or any property is injured, the person so offending shall be imprisoned in the penitentiary not less than three nor more than ten years. And if, in consequence of any such act, done with such intent, any person is killed, the persons so offending shall be deemed guilty of murder and punished accordingly. [Laws 1877, sec. 1, p. 86.

AN ACT to revise the law in relation to criminal jurisprudence. In force July 1, 1874.

3. [PENALTY FOR BURNING WAREHOUSE, OFFICE, ETC.] § 13. Every person who shall willfully and maliciously burn or cause to be burned any dwelling house, kitchen, office, shop, barn, stable, storehouse, warehouse, malt-house, stilling-house, factory, mill, pottery or other building, the property of any other person, or any church, meeting house, school house, state house, court house, work house, jail or other public building, or any boat or other water craft, or any bridge of the value of $50, erected across any of the waters of this state, such person so offending shall be deemed guilty of arson, and upon conviction thereof shall be punished by imprisonment in the penitentiary for a term not less than one year nor more than twenty years; and should the life of any person be lost in consequence of any such burning, such offender shall be deemed guilty of murder and punished accordingly. [R. S. 1874, ch. 38, § 13, p. 354.

4. [BRINGING TO STATE CANADA THISTLE.] § 40. Whoever shall bring into this state, whether in the packing of goods, or in grain, or

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grass seed, or otherwise, any seed of the Canada thistle, and permit the same to be disseminated so as to vegetate on any land of this state, and whoever shall permit any Canada thistle to mature its seed on any land owned or occupied by him, so that the same is or may be disseminated, shall be fined not less than $10 nor more than $100; the fine to be paid to the commissioners of Canada thistles if any is appointed in the town, precinct, city or village or otherwise as directed by law. [R. S. 1874, ch. 38, § 40, p. 357.

5. [Railroads to Destroy Thistles.] § 41. If any company, association or person owning, controlling or operating a railroad shall refuse or neglect to dig up and destroy, or to take other certain means of exterminating Canada thistles and other noxious weeds that may at any time be growing upon the right of way or other lands of such roads, or appertaining thereto, they shall be fined for each offense not less than $50 nor more than $200; the fine to be paid as in the preceding section. [R. S. 1874, ch. 38, § 41, p. 358.

6. [Common Carrier.] § 49. Whoever, having any personal management or control of or over any steamboat, or other public conveyance used for the common carriage of persons, is guilty of gross carelessness or neglect in, or in relation to, the conduct, management or control of such steamboat, or other public conveyance, while being so used, for the common carriage of persons, whereby the safety of any person shall be endangered, shall be imprisoned in the penitentiary not exceeding three years, or fined not exceeding $5,000. [R. S. 1874, ch. 38, § 49, p. 359.

7. [Cruelty to Animals.] § 51. No railroad company or other common carrier in the carrying or transportation of any cattle, sheep, swine or other animals, shall allow the same to be confined in any car more than twenty-eight consecutive hours (including the time they shall have been upon any other road) without unloading for rest, water and feeding, for at least five consecutive hours, unless delayed by storm or accident, when they shall be so fed and watered as soon after the expiration of such time as may reasonably be done. When so unloaded they shall be properly fed, watered and sheltered during such rest by the owner, consignee or person in custody thereof, and in case of their default, then by the railroad company transporting them, at the expense of said owner, consignee or person in custody of the same; and such company shall have a lien upon the animals until the same is paid. A violation of this section shall subject the offender to a fine of not less than $3 nor more than $200. [R. S. 1874, ch. 38, § 51, p. 359.

8. [Embezzlement by Officers of Corporation.] § 75. If any officer, agent, clerk, or servant of any incorporated company; or if a clerk, agent, servant or apprentice of any person or copartnership or society embezzles or fraudulently converts to his own use, or takes and secretes with intent so to do, without the consent of his company, employer or master, any property of such company, employer, master, or another, which has come to his possession, or is under his care by virtue of such office or employment, he shall be deemed guilty of larceny. [R. S. 1874, ch. 38, § 75, p. 362.

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9. [OF RAILROAD TICKET.] § 77. Whenever any person in the employ of any railroad company, whether such company is incorparated by this or any other state, shall fraudulently neglect to cancel or return to the proper officer, company or agent, any coupon or other railroad ticket or pass, with the intent to permit the same to be used in fraud or injury of any such company, or if any person shall steal or embezzle any such coupon or other railroad ticket or pass, or shall fraudulently stamp, or print, or sign any such ticket, coupon or pass, or shall fraudulently sell or put in circulation any such ticket, coupon or pass, the person so offending shall be punished by imprisonment in the penitentiary for the term of one year. [R. S. 1874, ch. 38, § 77, p. 363.

10. [INDICTMENT.] § 82. In prosecutions for the offense of embezzling, fraudulently converting to one's own use, or fraudently taking or secreting with intent so to embezzle and convert the bullion, money, notes, bank notes, checks, drafts, bills of exchange, obligations or other securities for money, of any person, bank, incorporated company or copartnership, by a cashier or other officer, clerk, agent or servant of such person, bank, incorporated company, or copartnership, it shall be sufficient to allege generally in the indictment an embezzlement, fraudulent convertion, or taking with such intent, of fund of such person, bank, incorporated company or copartnership to a certain value or amount, without specifying any particulars of such embezzlement, and on trial, evidence may be given of any such embezzlement, fraudulent conversion, or taking with such intent, and it shall be sufficient to maintain the charge in the indictment, if it is proved that any bullion, money, note, bank note, check, draft, bill of exchange, or other security for money of such person, bank, incorporated company or copartnership, of whatever value or amount, was fraudulently embezzled, converted or taken with such intent, by such cashier or other officer, clerk, agent or servant. [R. S. 1874, ch. 38, § 82, p. 364.

11. [OF RECORDS, WRITINGS, ETC.] § 105. Every person who shall falsely make, alter, forge or counterfeit any record or other authentic matter of a public nature, or any charter, letters patent, deed, lease, indenture, writing obligatory, will, testament, codicil, annuity, bond, covenant, post note, check, draft, bill of exchange, contract, promisory note, due bill for the payment of money or property, receipt for money or property, power of attorney, any auditor's warrant for the payment of money at the treasury, county order, or any accountable receipt, or any order or warrant, or request for the payment of money or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing or acquittance, release or receipt for money or goods, or any acquittance, release or discharge of any debt, account, action, suit, demand or other thing, real or personal, or any transfer or assurance of money, stock, goods, chattels or other property whatever, or any letter of attorney or other power to receive money, or to receive or transfer stock or annuities, or to let, lease, dispose of, alien or convey any goods or chattels, lands or tenements, or other estate, real or personal, or any acceptance or indorsement of any bill of exchange, promissory note, draft or order, or assignment of any bond, writing obligatory, or promissory note for money or other property, or any ticket or pass for the passage of any person upon

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any railroad or other conveyance, or for the admission of any person to any entertainment for which a consideration is required, or any other written instrument of another, or purporting to be such, by which any pecuniary demand or obligation, or any right in any property is, or purports to be created, increased, conveyed, transferred, diminished or destroyed; or shall counterfeit or forge the seal or hand-writing of another, with intent to damage or defraud any person, body politic or corporate, whether the said person, body politic or corporate reside in or belong to this state or not; or shall utter, publish, pass or attempt to pass as true and genuine, or cause to be uttered, published, passed, or attempted to be passed as true and genuine, any of the above named false, altered, forged or counterfeited matters, as above specified and described, knowing the same to be false, altered, forged or counterfeited, with intent to prejudice, damage or defraud any person, body politic or corporate, whether the said person, body corporate or politic reside in this state or not; every person so offending shall be deemed guilty of forgery, and shall be imprisoned in the penitentiary not less than one year nor more than fourteen years. [R. S. 1874, ch. 38, § 105, p. 367.

12. [INCORPORATION TAKEN FOR GRANTED—EMBEZELMENT.] § 110. On the trial of any person for forging any bill or note, purporting to be the bill or note of some incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass any such forged bill or note, it shall not be necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but the same may be proved by general reputation. [R. S. 1874, ch. 38, § 110. p. 368.

13. [COUNTERFEITING SEALS.] § 114. Every person who shall fraudulently forge, deface, corrupt or counterfeit the seal of this state, or the seal of any court or public officer by law entitled to have and use a seal, or the seal of any public, municipal or private corporation, or shall make use of the same, or shall forge or counterfeit the signature of any public officer, or shall unlawfully and corruptly, or with evil intent, affix any of the said true seals to any commission, deed, warrant, pardon, certificate or other writing, or who shall have in his possession or custody any such counterfeit seal, and shall willfully conceal the same, knowing it to be falsely made and counterfeited, shall be imprisoned in the penitentiary not less than one nor more than twenty years. [R. S. 1874, ch. 38, § 114, p. 369.

14. [FRAUDULENT STOCK] § 119. Every president, cashier, treasurer, secretary or other officer, and every agent, attorney, servant or employee of any bank, railroad, manufactory or other corporation, and every other person who shall knowingly and designedly, and with intent to defraud any person, bank, railroad, manufacturing, or other corporation, issue, sell, transfer, assign or pledge, or cause or procure to be issued, sold, transfered, assigned or pledged, any false, fraudulent or simulated certificate or other evidence of ownership of any share or shares of the capital stock of any bank, railroad, manufacturing or other corporation, shall be punished by fine not exceeding $2,000, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine. [R. S. 1874, ch. 38, § 119, p. 370.

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15. [SIGNING WITH INTENT TO ISSUE.] § 120. Every president, cashier, treasurer, secretary or other officer, and every agent of any bank, railroad, manufacturing or other corporation, who shall willfully and designedly sign, with intent to issue, sell, pledge, or caused to be issued, sold or pledged, any false, fraudulent or simulated certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such corporation, or any instrument purporting to be a certificate or other evidence of such ownership or transfer, the signing, issuing, selling or pledging of which by such president, cashier, treasurer or other officer or agent, shall not be authorized by the charter and by-laws of such corporation, or by some amendment thereof, shall be punished by fine not exceeding $2,000, and by imprisonment in the penitentiary not more than ten years, as the jury shall determine. [R. S. 1874, ch. 38, § 120, p. 370.

16. [FRAUDULENT RECEIPTS—WAREHOUSEMAN.] § 124. Whoever fraudulently makes or utters any receipt, or other written evidence of the delivery or deposit of any grain, flour, pork, wool, salt, or other goods, wares or merchandise, upon any wharf or place of storage, or in any warehouse, mill, store, or other building, when the quantity specified therein has not in fact been delivered or deposited as stated in such receipt or other evidence of the delivery or deposit thereof, and is not, at the time of issuing the same, still in store, and the property of the person to whom or to whose agent the receipt is issued, or for the whole or any part of which any other receipt, is outstanding, or uncancelled, shall be imprisoned in the penitentiary not less than one nor more than ten years. [R. S. 1874, ch. 38, § 124, p. 371.

17. [ISSUING BY WAREHOUSEMAN AND OTHERS.] § 125. Whoever, having given any such receipt or written evidence of deposit or storage as is specified in the preceding section, or being in the possession or control of such property, shall sell, encumber, ship, transfer, or in any manner remove from the place of storage, or allow the same to be done, any such grain, flour, pork, wool, salt, or other goods, wares and merchandise, without the written consent of the holder of such receipt or other evidence of deposit or storage, except in cases of necessity for the purpose of saving such property from loss or damage by fire, flood or other accident, shall be imprisoned in the penitentiary not less than one nor more than ten years. [R. S. 1874, ch. 38, § 125, p. 371.

18. [GAMBLING IN GRAIN.] § 130. Whoever contracts to have or give to himself or another the option to sell or buy, at a future time, any grain, or other commodity, stock of any railroad or other company, or gold, or forestalls the market by spreading false rumors to influence the price of commodities therein, or corners the market, or attempts to do so in relation to any such commodities, shall be fined not less than $10 nor more than $1,000, or confined in the county jail not exceeding one year, or both; and all contracts made in violation of this section shall be considered gambling contracts, and shall be void. [R. S. 1874, ch. 38, § 130, p. 372.

19. COMBINING TO INJURE RAILROADS.] § 187. If any two or more persons shall conspire or combine to break down, take up, injure

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or destroy any railroad track, or railroad bridge, or to burn or destroy any engine, engine house, car house, machine shop, or any other building or machinery necessary to the free use of any railroad, every such person shall be punished by imprisonment in the penitentiary not less than two nor more than five years. [R. S. 1874, ch. 38, § 187, p. 380.

20. [OBSTRUCTING TRAINS, ETC.] § 188. If any two or more persons shall attempt to prevent the passage of any railroad train, carrying any provisions, troops or munitions of war, for the use or in the employment of this state or of the United States, by any violence or offer of violence, or shall assemble themselves together for that purpose, or if any person shall induce, entice or persuade, or attempt to induce, entice or persuade, any other person to do so, such persons, and each of them, shall be imprisoned in the penitentiary not less than one nor more than ten years. [R. S. 1874, ch. 38, § 188, p. 380.

21. [ATTEMPTING INJURY TO RAILROADS.] § 189. Whoever shall maliciously make any attempt, although the same may not succeed, to place obstructions on any railroad track, to burn, blow up, or destroy any railroad bridge, or in any other way prevent the free and safe passage of trains on any railroad, shall be imprisoned in the penitentiary not less than one nor more than ten years. [R. S. 1874, ch. 38, § 189, p. 380.

22. [INFLUENCING OTHERS.] § 190. Whoever shall maliciously hire, persuade or induce, attempt to hire, induce or persuade any person to burn, or in any way to injure or destroy any railroad bridge, to take up, injure or destroy any railroad track, or any machine shop, engine house, car house, engine or car, or other machinery or property necessary for the operation of any railroad, shall be imprisoned in the penitentiary not less than one nor more than ten years. [R. S. 1874, ch. 38, § 190, p. 380.

23. [RAILROAD ENGINEERS, ETC.] § 191. Any engineer or person having charge of and running any railroad engine or locomotive, who shall willfully or unnecessarily kill, wound or disfigure any horse, cow, mule, hog, or other useful animal, shall, upon conviction, be fined in a sum not less than the value of the property so killed, wounded or disfigured, and confined in the county jail for a period of not less than ten days; and any such engineer who shall wantonly or unnecessarily blow the engine whistle so as to frighten any team shall be liable to a fine of not less than $10 nor more than $50. [R. S. 1874, ch. 38, § 191, p. 380.

24. [INJURING BAGGAGE.] § 193. Any baggage-master, express agent, stage driver, hackman or any other person, whose duty it is to handle, remove or take care of trunks, valises, boxes, packages or parcels, while loading, transporting, unloading, delivering or storing the same, whether or not in the employ of a railroad, steamboat or stage company, shall wantonly or recklessly injure or destroy the same, he shall be fined not exceeding $200. [R. S. 1874, ch. 38, § 193, p. 380.

25. [WITHHOLDING FUNDS.] § 215. If any state, county, town, municipal or other officer or person, who now is or hereafter may be authorized by law to collect, receive, safely keep or disburse any money,

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revenue, bonds, mortgages, coupons, bank bills, notes, warrants or dues, or other funds or securities belonging to the state, or any county, township, incorporated city, town or village, or any state institution, or any canal, turnpike, railroad, school or college fund, or the fund of any public improvement that now is or may hereafter be authorized by law to be made, or any other fund now in being or that may hereafter be established by law for public purposes, or belonging to any insurance or other company or person, required or authorized by law to be placed in the keeping of any such officer or person, shall fail or refuse to pay or deliver over the same when required by law, or demand is made by his successor in office or trust, or the officer or person to whom the same should be paid or delivered over, or his agent or attorney, authorized in writing, he shall be imprisoned in the penitentiary not less than one nor more than ten years: *Provided*, such demand need not be made when, from the absence or fault of the offender, the same cannot conveniently be made: *And, provided*, that no person shall be committed to the penitentiary under this section, unless the money not paid over shall amount to $100, or if it appear that such failure or refusal is occasioned by unavoidable loss or accident. Every person convicted under the provisions of this section shall forever thereafter be ineligible and disqualified from holding any office of honor or profit in this state. [R. S. 1874, ch. 38, § 215, p. 384.

26. [Assuming Corporate Name.] § 220. If any company, association or person puts forth any sign or advertisement, and therein assumes, for the purpose of soliciting business, a corporate name, not being incorporated, or being incorporated, puts forth any sign or advertisement, assuming any other or different name than that by which it is incorporated or authorized by law to act, such company, association or person shall be fined not less than $10 nor more than $200, and a like sum for each day he or it shall continue to offend after having been once fined. [R. S. 1874, ch. 38, § 220, p. 385.

27. [Circulating Obscene Books.] § 223. Whoever brings, or causes to be brought into this state, for sale or exhibition, or shall sell or offer to sell, or shall give away or offer to give away, or have in his possession, with or without intent to sell or give away, any obscene and indecent book, pamphlet, paper, drawing, lithograph, engraving, daguerreotype, photograph, stereoscopic picture, model, cast, instrument or article of indecent or immoral use, or shall advertise the same for sale, or write or cause to be written, or print or cause to be printed, any circular, handbill, card, book, pamphlet, advertisement or notice of any kind, or shall give information orally, stating when, how, or of whom, or by what means any of the said indecent and obscence articles and things hereinbefore mentioned can be purchased or otherwise obtained, or shall manufacture, draw and expose, or draw with intent to sell, or to have sold, or print any such articles, shall be confined in the county jail not more than six months, or be fined not less than $100 nor more than $1,000 for each offense—one half of said fine to be paid to the informer upon whose evidence the person so offending shall be convicted, and one half to the school fund of the county in which the said conviction is obtained. [R. S. 1874, ch. 38, § 223, p. 386.

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28. [Depositing with Common Carrier.] § 224. If any person shall deposit or cause to be deposited in any postoffice within this state, or place in charge of any express company, or person connected therewith, or of any common carrier or other person, any of the obscene and indecent articles and things mentioned in the preceding section, or any circular, handbill, card, advertisement, book, pamphlet or notice of any kind, or shall give oral information stating where, how or of whom such indecent and obscene articles or things can be purchased or otherwise obtained in any manner, with the intent of having the same conveyed by mail or express, or in any other manner, or if any person shall knowingly or willfully receive the same with intent to carry or convey, or shall carry or convey the same by express, or in any other manner, (except in the United States mail), he shall be subject, for each offense, to the same fines and penalties as are prescribed in the preceding section, and said fine shall be divided and paid in the same manner as therein provided. [R. S. 1874, ch. 38, § 224, p. 386.

29. [Property of Railroad Company.] § 242. If any person shall purchase or receive for sale from any other person any link, pin, bearing, journal, or other article of iron, brass or other metal which has been manufactured and is used exclusively for raiload purposes, and which shall have stamped thereon the name of some railroad company, or the initial letter thereof, without the consent in writing of the president, general manager or general superintendent of such railroad company, such person shall be fined in a sum not less than $100 or more than $500, and be imprisoned not less than ten days nor more than ninety. [R. S. 1874, ch. 38, § 242, p, 389.

30. [Offense on Railroad Car.] § 402. When any offense is committed in or upon any railroad car passing over any railroad in this state, or any water craft navigating any of the waters within this state, and it cannot readily be determined in what county the offense was committed, the offense may be charged to have been committed and the offender tried in any of the counties through or along or into which such railroad car or water craft may pass or come, or can reasonably be determined to have been, on or near the day when the offense was committed. [R. S. 1874, ch. 38, § 402, p, 407.

An Act to amend an act entitled "An act to prevent the importation of Texas or Cherokee cattle into the State of Illinois." In force April 16, 1869.

31. [Cattle—When not to be brought in the State.] § 1. It shall not be lawful for any person or persons, railroad company or other corporation, or any association of persons, to bring into this state any Texas or Cherokee cattle, except between the first day of October and the first day of March following, of each year: *Provided*, that the right to bring into this state any such cattle shall in no case be any defense for any injury sustained to any one, by reason of the bringing such cattle into the state. [R. S. 1874, ch. 8, § 12, p. 141.

32. [When Ownership Unlawful.] § 2. That it shall not be lawful for any person or persons, or railroad company or other corporation, or

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association of persons whatever, within this state, to own or have in possession or control any Texas or Cherokee cattle, at any time, which may have been brought into this state at any time except between the first day of October and the first day of March, following, of each year. [R. S. 1874, ch. 8, § 13, p 141.

33. [PENALTIES—POSSESSION.] § 3. That any person or persons who shall bring into this state, or cause to be brought into this state, any Texas or Cherokee cattle, except at the time permitted in section one (1) of this act, or who shall own, possess or control any such cattle, except as allowed in section two (2) of this act, shall be liable to indictment and conviction, fine and imprisonment, and shall be fined, upon conviction, in any sum not exceeding $10,000 nor less than $500, and may be imprisoned, in addition to such fine, at the discretion of the court, not more than six months, in the county jail. And any such persons may, in the first instance, be brought before any justice of the peace, and be held to bail to appear before the circuit court, to answer to any such charge as may be then preferred against them by indictment: *Provided*, that any railroad conductor or servant, agent or officer of any railroad company, who shall haul or ship any such cattle in violation of this act, on any railroad in this state, shall be deemed to have possession of the same within the meaning of this section. [R. S. 1874, ch. 8, § 14, p 141.

34. [JOINT AND SEVERAL LIABILITY.] § 5. That, whenever, in any case, any damage or loss shall or may be occasioned to any person or persons, resulting in any manner from any such Texas or Cherokee cattle having been brought into this state, or from any such cattle being owned or possessed in this state, at any time, by any person or persons or railroad company, ar any other company or association of persons, whatever, then any and all of such persons, railroad company, or other corporation or association of persons, who shall have brought into this state or owned or possessed any such Texas or Cherokee cattle within this state, shall be liable, jointly or severally, to any person or persons who may suffer loss by reason of any such owning or possessing within this state, or bringing into this state any such cattle; and that in any suit for the recovery of damage, or compensation for any loss which may be sustained by any person so suing, from any such Texas or Cherokee cattle, it shall be sufficient for the plaintiff or plaintiffs to show that the injury of which he or they may complain arose from any lot of Texas or Cherokee cattle which is or may have been owned or had in possession, or brought into this state at any time within the year, by any such defendant. And it shall not be necessary for the plaintiff to show that the injury of which he or they may complain accrued while any such Texas or Cherokee cattle were in the possession or ownership of any such defendant or defendants—it being the intention of this section to make all persons or corporations liable to injured persons, in the first instance, for any injury which may arise from disease spreading from any such Texas or Cherokee cattle. [R. S. 1874, ch. 8, § 16, p 142.

35. [WHAT NOT A DEFENSE.] § 6. That the right to bring into this state Texas or Cherokee cattle, between the first day of October and the first day of March following, shall in no case be any defense for any loss that may accrue from such cattle to any person; nor shall

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any right to own or possess or control any such cattle, in any case, be any defense for any injury or loss which may arise to any person by reason of such right to own or possess such Texas or Cherokee cattle. [R. S. 1874, ch. 8, § 17, p. 142.

36. [What Cattle Meant—Evidence.] § 9. That Texas and Cherokee cattle, as mentioned in this act, shall be taken to mean a class or kind of cattle, without reference to where they may have come from: *Provided*, it shall not apply to section 1 of this act, when such Texas or Cherokee cattle shall have been introduced into either the states of Kansas, Missouri, Nebraska, Iowa or Wisconsin prior to the first day of January, before being brought into this state; but the burthen of alleging and proving that such cattle were introduced into either of the states above mentioned prior to January first and wintered there the remainder of the winter, shall be upon the defendant: *Provided, further*, that the official certificate of the county clerk of the county where such cattle have been wintered shall be *prima facie* evidence thereof. [R. S. 1874, ch. 8, § 20, p. 143.

An act to prohibit any person from obstructing the regular operation and conduct of the business of railroad companies or other corporations, firms or individuals. In force July 1, 1877.

37. [Engineer Not to Abandon Engine.] § 1. If any locomotive engineer, in furtherance of any combination or agreement, shall willfully and maliciously abandon his locomotive upon any railroad at any other point than the regular scedule destination of such locomotive, he shall be fined not less than twenty dollars, nor more than one hundred dollars, and confined in the county jail, not less than twenty days, nor more than ninety days. [Laws 1877, § 1, p. 167.

38. [Obstructing Railroad Business.] § 2. If any person or persons shall willfully and maliciously, by any act or by means of intimidation, impede or obstruct, except by due process of law, the regular operation and conduct of the business of any railroad company or other corporation, firm or individual in this state, or of the regular running of any locomotive engine freight or passenger train of any such company, or the labor and business of any such corporation, firm or individual, he or they shall, on conviction thereof, be punished by a fine not less than twenty dollars ($20) nor more than two hundred dollars ($200) and confined in the county jail not less than twenty days, nor more than ninety days. [Laws 1877, § 2, p. 168.

39. [Conspiracy to Impede Business.] § 3. If two or more persons shall willfully and maliciously combine or conspire together to obstruct or impede by any act, or by means of intimidation, the regular operation and conduct of the business of any railroad company or any other corporation, firm or individual in this State, or to impede hinder or obstruct, except by due process of law, the regular running of any locomotive engine freight or passenger train, on any railroad, or the labor or business of any such corporation, firm or individual, such persons shall, on conviction thereof, be punished by fine not less than twenty dollars ($20) nor more than two hundred dollars ($200) and confined in the county jail not less than twenty days, nor more than ninety days. [Laws 1877, § 3, p. 168.

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40. [CONSTRUCTION OF THIS ACT.] § 4. This act, shall not be construed to apply to cases of persons voluntarily quitting the employment of any railroad company or such other corporation, firm or individual, whether by concert of action or otherwise, e[x]cept as is provided in section one (1) of this act. [Laws 1877, § 4, p. 168.

AN ACT to prevent frauds in the coloring of grain. In force Jnly 1, 1877.

41. [COLORING GRAIN.] § 1. That no person shall subject, or cause to be subjected, any barley, wheat, or other grain to fumigation, by sulphur, or other material, or to any chemical or coloring process, whereby the color, quality or germ of such grain is affected. [Laws 1877, § 1, p. 91.

42. [NOT TO BE ON SALE.] § 2. No person shall offer for sale, or procure to be sold, any barley, wheat, or other grain, which shall have been subjected to such fumigation, or other process, as provided in section one (1) of this act, knowing such barley, wheat, or other grain to have been so subjected. [Laws 1877, § 2, p. 91.

43. [PENALTY.] § 3. Any person violating the provisions of this act, shall, upon conviction, be punished by fine of not less than one hundred ($100) dollars, nor more than one thousand ($1,000) dollars, and imprisonment not exceeding three months in the county jail, and shall also be liable for all damages sustained by any person injured by such violation. [Laws 1877, § 3, p. 91.

44. [HOW FINES COLLECTED] § 4. Any court of record shall have jurisdiction over this act, and all fines under this act, shall be collected as the statute provides in other criminal cases. [Laws 1877, § 4, p. 91.

CHAPTER VIII.

MISCELLANEOUS PROVISIONS.

1. Jurisdiction of justice of the peace.
2. Service on corporations.
3. Enacting clause.
4. Suits—where brought.
5. Service—return.
6. Notice to railroads.
7. Service on station agent.
8. Consent to construct bridges.
9. Sale of unclaimed property.
10. Perishable property.
11. Application of act.
12. Power to sell school lands.
13. Plats made and recorded.
14. Common law liability.
15. Number public documents printed.
16. Size of reports.
17. Classes of binding.
18. Manner of binding.
19. Appropriation for ordinary and contingent expenses.

AN ACT to provide for the election and qualification of justices of the peace and constables, and to provide for the jurisdiction and practice of justices of the peace, in civil cases and to fix the duties of constables, and to repeal certain acts therein named. In force July 1, 1872.

1. [JURISDICTION OF JUSTICES OF THE PEACE.] § 13. Justices of the peace shall have jurisdiction in their respective counties in the

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following cases, when the amount claimed does not exceed two hundred dollars:

Fourth—In actions against railroad companies, and any person or company controlling, operating or using any railroad in this state, for killing or injuring horses, cattle, sheep, hogs or other stock; for loss of or injury to baggage or freight; and for injury or damage to real or personal property caused by setting fire to the same by their engines or otherwise. [R. S. 1874, ch. 79, § 13, p. 639.

2. [SERVICE ON CORPORATIONS.] § 21. An incorporated company may be served by leaving a copy of the summons with its president, secretary, superintendent, general agent, cashier or principal clerk, if either can be found in the county in which the suit is brought; if neither shall be found in the county, then by leaving a copy of the summons with any director, clerk, engineer, conductor, station agent, or any agent of such company found in the county. [R. S. 1874, ch. 79, § 21, p. 640.

AN ACT to amend sections two and four of an act entitled "An act in regard to practice in courts of record," approved February 22, 1872. In force July 1, 1877.

3. [ENACTING CLAUSE.] § 1. That sections two and four of an act entitled "An act in regard to practice in courts of record," approved February 22, 1872, be and the same are hereby amended so as to read as follows, to-wit:

4. [SUITS WHERE BROUGHT.] § 2. It shall not be lawful for any plaintiff to sue any defendant out of the county where the latter resides or may be found, except in local actions, and except that in every species of personal actions in law where there is more than one defendant, the plaintiff commencing his action where either of them resides, may have his writ or writs issued directed to any county or counties where the other defendant or either of them may be found: *Provided*, That if a verdict shall not be found or judgment rendered against the defendant or defendants resident in the county where the action is commenced judgment shall not be rendered against those defendants who do not reside in the county, unless they appear and defend the action. Actions against a railroad or bridge company, may be brought in the county where its principal office is located, or in the county where the cause of action accrued or in any county into or through which its road or bridge may run. [Laws 1877, §2, p. 146.

5. [SERVICE—RETURN.] § 4. An incorporated company may be served with process by leaving a copy thereof with its President if he can be found in the county in which the suit is brought, if he shall not be found in the county, then by leaving a copy of the process with any clerk, secretary, superintendent, general agent, cashier, principal, director, engineer, conductor, station agent or any agent of said company found in the county, and in case the proper officer shall make return upon such process that he cannot in his county find any

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clerk, secretary, superintendent, general agent, cashier, principal, director, engineer, conductor, station agent or any other agent of said company, then such company may be notified by publication and mail in like manner and with like effect, as is provided in sections twelve and thirteen of an act entitled "An act to regulate the practice in courts of chancery," approved March 15, 1872." [Laws 1877, § 4, p. 147.

AN ACT in regard to gateways, roads and bridges in counties not under township organization. In force April 18, 1873.

6. [NOTICE TO RAILROADS.] § 54. In addition to the notices now required by law, in proceedings for locating, laying out and opening of public roads, similar notices shall be served upon any railroad company, across or alongside of whose railroad it may be proposed to locate a public road: *Provided*, that this act shall not apply to the proceedings for opening streets in towns and cities. [R. S. 1874, ch. 121, § 181, p. 944.

7. [SERVICE ON STATION AGENT.] § 55. The notices, as required by this act, shall be served upon the station agent of any such railroad company, nearest to the proposed location of such projected public road. [R. S. 1874, ch. 121, § 182, p. 945.

AN ACT giving the assent of the state of Illinois to the construction of bridges across navigable rivers in this state, and upon the boundaries thereof. In force July 1, 1872.

8. [CONSENT TO CONSTRUCT BRIDGES.] § 1. That the assent of the state of Illinois is hereby given to any corporation or association organized under the laws of this state and subject thereto, to construct bridges across navigable rivers in this state, and upon the boundaries thereof, whenever authorized by the congress of the United States, under such conditions and restrictions as the congress may impose. [R. S. 1874, ch. 121, § 186, p. 945.

AN ACT to provide for the sale of unredeemed property by common carriers, warehousemen and inn-keepers. In force July 1, 1874.

9. [SALE OF UNCLAIMED PROPERTY.] § 1. That whenever any trunk, carpet bag, valise, bundle, package or article of property transported or coming into the possession of any railroad, or express company, or any other common carrier, in the course of its or his business as common carrier, shall remain unclaimed and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed, and the owner, or person to whom the same is consigned cannot be found, upon diligent, inquiry, or, being found, and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon, for the space of three months, it shall be lawful for such common carrier to sell such article at public auction, after giving the owner or consignee fifteen days' notice of time and place of sale, through the postoffice and by advertising in a newspaper published in the county where such sale is made, and out of the proceeds

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of such sale to pay all legal charges on such articles, and the overplus, if any, shall be paid to the owner or consignee upon demand. [R. S. 1874, ch. 141, § 1, p. 1086.

10. [PERISHABLE PROPERTY.] § 2. Perishable property which has been transported to destination, and the owner, or consignee, notified of its arrival, or being notified, refuses or neglects to receive the same and pay the legal charges thereon, or if upon diligent inquiry the consignee cannot be found, such carrier may, in the exercise of a reasonable discretion, sell the same at public or private sale without advertising, and the proceeds, after deducting the freight and charges and expenses of sale, shall be paid to the owner or consignee upon demand. [R. S. 1874, ch. 141, § 2, p. 1086.

11. [APPLICATION OF ACT.] § 3. The provisions of this act shall apply to inn-keepers and warehousemen. [R. S. 1874, ch. 141 § 3, p. 1086.

AN ACT to empower township trustees to sell and convey right of way and depot grounds for the use of railroads crossing school lands. In force July 1, 1875.

12. [POWER TO SELL SCHOOL LANDS.] § 1. The trustees of schools of any township concerned are hereby authorized and empowered, in their corporate capacity, to sell and convey to any railroad company which may construct a railroad across any of the public school lands of such township, the right of way and necessary depot grounds. All money received by such trustees for any right of way or depot ground so sold, to be turned over by such trustees to the treasurer of the township for school purposes. [Laws 1875, § 1, p. 96.

AN ACT to revise the law in relation to plats. In force July 1, 1874.

13. [PLATS MADE AND RECORDED.] § 9. Whenever any highway, road, street, alley, public ground, toll road, railroad or canal is laid out, located, opened, widened or extended, or the location thereof altered, it shall be the duty of the commissioners, authorities, officers, persons or corporations, public or private, laying out, locating, opening, widening, extending or altering the same, to cause a plat thereof showing the width, courses and extent thereof, and making such reference to known and established corners or monuments that the location thereof may be ascertained, to be made, and recorded in the office of the recorder of the county in which the premises taken or used for the same, or any part thereof, are situated, within six months after such highway, road, street, alley, public ground, tollroad, railroad or canal is laid out, located, opened, widened or extended, or the location thereof altered; and when any highway, road, street, alley, public ground, tollroad, railroad or canal is vacated, the order, ordinance or other declaration vacating the same shall be in like manner recorded. This act shall not be construed to alter or effect any law specifically providing for the recording of any such plat, or to require the same to be recorded sooner than is so specifically provided; except that any requirements to record such plat in any other place than is provided herein shall not excuse the parties from complying with this

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act. Whoever shall refuse or neglect to comply with this section shall forfeit $25, and the like sum for every month he shall continue in such refusal or neglect after conviction therefor, to be recovered before any justice of the peace of the county, in the name of the county, one-half to the use of the county, and the other half to the use of the person complaining. [R. S. 1874, ch. 109, § 9, p. 772.

AN ACT to fix the liability of common carriers receiving property for transportation. In force July 1, 1874.

14. [COMMON LAW LIABILITY.] § 1. That whenever any property is received by a common carrier, to be transported from one place to another, within or without this state, it shall not be lawful for such carrier to limit his common law liability safely to deliver such property at the place to which the same is to be transported, by any stipulation or limitation expressed in the receipt given for such property. [R. S. 1874, ch. 27, § 1, p. 268.

AN ACT to revise the law in relation to state contracts. In force July 1, 1874.

15. [NUMBER OF PUBLIC DOCUMENTS PRINTED.] § 29. Hereafter the number of public documents printed, bound and distributed by authority of state shall be as follows:

* * * * * * * *

Eleventh—The report of the railroad and warehouse commissioners, 4,000 copies, of which one copy shall be delivered to each member, and one to each officer of the general assembly, ten copies be retained for the state library, one copy be sent to each county clerk, one copy to each county board, 700 copies be delivered to the secretary of state for general distribution, and the remainder to said commissioners. [R. S. 1874, ch. 127, § 29, p. 1,000.

16. [SIZE OF REPORTS.] § 31. No report of any institution, department or officer shall exceed three hundred printed pages, unless the commissioners of state contracts and the governor shall, for good cause, certify to the secretary of state that the interests of the state require that such report shall exceed three hundred pages. [R. S. 1874, ch. 127, § 31, p. 1000.

17. [CLASSES OF BINDING.] § 37. The binding for the state shall be and hereby is, divided into five classes, as follows: * * *

Third—The folding, sewing with two twines, and trimming of the reports of the executive departments and of public institutions, and the binding thereof in English cloth and binder's or cloth board sides, with title and any required ornament embossed in gold on the backs and blank fillets on the sides, shall constitute the third class.

Fourth—The folding, stitching with three holes and trimming of reports to the general assembly, or either house thereof, and other documents, and the binding of said reports in paper covers, with the title page printed thereon, shall constitute the fourth class. [R. S. 1874, ch. 127, § 37, p. 1001.

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18. [MANNER OF BINDING.] § 39. Of the number of laws, journals and volumes of reports required to be printed, six hundred copies of the laws and three hundred copies of the journals and volumes of reports shall be bound in the second class of binding, as described in section 37 of this act; and of the number of reports required to be printed, three thousand copies each of that of the superintendent of public instruction, and railroad and warehouse commissioners; two thousand copies each of the state board of public charities and industrial university; five hundred copies each of auditor of state, secretary of state and other state officers, and insurance report; and ten thousand [copies] of the report of the state board of agriculture, shall be bound in the third class of binding, as described in section 37 of this act. The laws, journals and volumes of reports, except as hereinbefore provided in this section, shall be bound in the first class of binding as described in section 37 of this act; the reports, except as hereinbefore provided in this section, shall be bound in the fourth class of binding, as described in section 37 of this act. [R. S. 1874, ch. 127, § 39, p 1002.

AN ACT to provide for the ordinary and contingent expenses of the state government until the expiration of the first fiscal quarter after the adjournment of the next regular session of the general assembly, and for the purpose of suspending the salaries of the state house commissioners from July 1st, A. D. 1877, until provision is made for funds to complete the state house building. In force July 1, 1877.

19. [APPROPRIATES FOR ORDINARY AND CONTINGENT EXPENSES.] § 1. That the following named sums be and they are hereby appropriated to meet the ordinary and contingent expenses of the state government until the expiration of the first fiscal quarter after the adjournment of the next regular session of the general assembly.

* * * * * * * * *

Twenty-fourth—The sum of eighty-six thousand dollars ($86,000) per annum, or so much thereof as may be needed, to pay the interest on the bonded debt of the state, to be paid on the certified account of the state treasurer, approved by the governor. The amount appropriated by this clause to be paid out of the Illinois Central railroad fund. [Laws 1877, § 1, p. 43.

Twenty-fifth—To the railroad and warehouse commissioners for the incidental expenses of their office, including care, stationery, postage and telegraphing expenses, extra clerk hire, the fees of experts employed, and for the secretary's salary, and for all necessary expenditures except those hereinafter provided for, a sum not to exceed four thousand dollars ($4,000) per annum. For expenses incurred in suit or investigations commenced by the authority of the state under any law now in force or hereafter to be enacted, empowering or instructing the board of commissioners, the sum of five thousand dollars ($5,000) per annum, or such part thereof as may be needed for such purpose; the appropriations made by this clause to be paid upon detailed statements filed with the auditor bearing the order of the board and the approval of the governor. [Laws 1877, § 1, p. 43.

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APPENDIX.

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RULES

Established by the Board of Railroad and Warehouse Commissioners for the Government of the Inspection Department, as also the Rules relating to the Graduation of Grain.

OFFICES OF CHIEF INSPECTOR AND REGISTRAR.

[Adopted May 8, 1873.]

1. The office of Chief Inspector of Grain and the Warehouse Registrar for the city of Chicago, shall be kept open for business from 7 A. M. till 6 P. M., from the 15th of April to the 15th of November, and from 9 A. M. until 5 P. M. during the balance of the year.

2. The said Chief Inspector shall keep a set of books in which shall be entered an accurate account of all grain inspected, showing the quantity and quality of each variety, the amount of inspection fees chargeable thereon, by whom payable, and the amount collected, which books shall be open at all times to the inspection of the commissioners. He shall also keep books of record of the inspection, and shall furnish the Warehouse Registrar with such information as may be necessary to enable that officer to keep a record of all grain inspected "in" and "out" in all warehouses of class "A."

3. The said Chief Inspector shall have a general supervison of all assistant inspectors and employes in his department and enforce all laws, rules and regulations pertaining thereto, and shall report promptly if, in his opinion, the services of any employe can be properly dispensed with. In case of emergencies the said Chief Inspector shall have power to employ temporarily, in accordance with law, such additional help as the exigencies of the service may demand, certifying that such additional help was necessary, and reporting the same monthly to the commissioners. And it shall be the duty of the said Chief Inspector, when, in his judgment, the interests of the service demand immediate action, to relieve from duty any of the employes of his department for any gross violation of duty, and at once communicate the same to the board, with such facts pertaining to such suspension as may be at his command.

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4. The said Chief Inspector is hereby authorized and directed to collect such charges for inspection of grain as may be established from time to time by the Railroad and Warehouse Commission and all other moneys that may become due on account of inspection service in the city of Chicago, and to deposit daily the sums so collected to the credit of the said commissioners in some bank of deposit to be by them designated to him for that purpose. He shall also daily report to said commissioners the amount so collected, which report shall be accompanied with a certificate of deposit duly certified by the proper officer of such bank. The said Chief Inspector shall also deliver to his successor in office all moneys, books, papers and other property remaining in his hands, or subject to his control, at the expiration of his term of office or upon his removal from or discontinuance in office as such Chief Inspector. [This rule is as amended May 7, 1875.

5. The said Chief Inspector is hereby authorized to collect until further notice, on all grain inspected under his direction, as follows: For "in" inspection, twenty-five cents per car load; forty cents per thousand bushels from canal boats; one-quarter of one cent per bushel from bags. For "out" inspection, thirty cents per car load to cars; forty cents per thousand bushels to vessels; thirty cents per car load to teams; ten cents per wagon load to teams. [This rule is as amended June 15, 1875.

6. The said Chief Inspector, and all persons inspecting grain under his direction, shall in no case make the grade of grain above that of the poorest quality found in any lot of grain, when it evidently has been mixed or doctored for the purposes of deception.

7. All persons employed in the inspection of grain shall report all attempts to defraud the system of grain inspection as established by law. They shall also report to the said Chief Inspector, in writing, all instances where warehousemen deliver, or attempt to deliver, grain of a lower grade than that called for by the warehouse receipt. They shall also report all attempts of receivers or shippers of grain to instruct or in any way influence the action or opinion of the inspector, and the Chief Inspector shall report all such cases to the commissioners.

8. The said Chief Inspector is authorized to make such arrangements for the collection of inspection fees as he may deem proper, reporting the same to the commissioners for their approval, and enforcing all such provisions in the premises as the commissioners may enact.

9. All assistant inspectors when on duty shall wear a badge furnished by the chief inspector, and plainly designating the position of each in the department.

10. The grading and inspection of grain shall be strictly in accordance with the provisions of "An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to article 8 of the constitution of this state," approved 25th April, 1871, in force July 1, 1871.

11. It shall be the duty of the warehouse registrar to keep a "registration book" for each elevator of class "A" doing business in Chicago,

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in which shall be entered a correct description of each warehouse receipt for grain that may be registered. When such receipts are offered for registration, if the said Registrar shall be satisfied of the correctness of the same, he shall stamp them with a proper stamp for that purpose, containing in legible letters the date of such presentation and the name of the Registrar, with the title of his office, "Warehouse Registrar, Chicago." Before entering such description of receipts on his books, he shall carefully compare the same with the returns which shall have been made by the inspectors at the respective elevators, and, if any difference shall exist, shall institute a thorough examination into the reasons therefor, and shall have such error corrected. But if it shall appear that any fraud in the issuance of the receipts shall have been attempted by such warehousemen, the said Registrar shall at once report the same to the commissioners.

12. The said Registrar shall carefully preserve all reports of receipts and shipments made to his office by the elevators of class "A," in pursuance of law, or such regulations as may be established, and shall keep an accurate account of the grain so reported, in proper books, with each warehouse firm of class "A," and when such reported shipments shall compare with the receipts cancelled for such shipments, he shall mark "cancelled," with the date thereof, on his registration book, opposite the recorded description of such receipt.

13. The said Registrar shall have general supervision over his assistants, and such employes as the commissioners may appoint, and shall direct all such employes in the discharge of their duties. In case of emergencies he shall have power to employ, temporarily, such additional assistants as the exigencies of the service may demand, reporting the same, monthly, to the commissioners, and certifying such additional assistants were necessary. He shall, also, report to the commissioners, monthly, if in his opinion the persons so employed can be properly dispensed with.

14. The said Registrar shall procure from the clerk of the circuit court of Cook county, and keep in his office, a complete list of all warehouse licenses granted by the said circuit court of Cook county.

15. The said Chief Inspector shall, previous to the first Tuesday of each month, transmit to the office of the commission a statement (in duplicate) of (1), the amount of cash receipts from any and all sources during the previous month; (2), the amount of uncollected bills due the department, and a list of the names of persons from whom due, with the respective amounts due from each; (3), the expenses of the department, for the previous month, the statement to be accompanied by the bills of said expenses, and the pay rolls giving the names and duties of all employes in the office of the Chief Inspector and Registrar, and the amount due to each, said bills and pay rolls being certified as correct by the Chief Inspector and Warehouse Registrar as the case may be. Upon the approval of the said bills and pay rolls by the commissioners, and the return of the same to the Chief Inspector with a check for the aggregate amount of said bills and pay rolls drawn upon the bank in which the money of the department is deposited, the Chief Inspector shall forthwith pay the said bills and pay rolls, and as soon as practicable return to the com-

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missioners the said bills and pay rolls duly receipted. [This rule is as amended Dec. 21, 1877.

16. All persons appointed by the commissioners to fill the various positions under the law, will hold their several positions for such time only as in the judgment of the commissioners the interest of the service in which they are employed demands. And the compensation of such persons, so appointed, shall cease at the time their services are dispensed with.

17. All rules and regulations for the government of the inspection and registration departments, of Chicago, which are inconsistent with the rules and regulations herein contained, are hereby repealed.

18. The Chief Inspector shall employ, from time to time, as the necessities of the service may require, one or more receiving clerks, whose duty it shall be to keep, in a book provided for the purpose, a record of all grain received into any warehouse of class "A," as shown by the Inspector's certificate, and ascertained by actual inspection that such grain is delivered to the house to which it is consigned, and that he make a daily report thereof to the Warehouse Registrar, and that the compensation of such clerk shall not exceed fifty dollars per month. [This rule was adopted February 4, 1874.

SUPPLEMENTAL RULES.

A. The Chief Inspector of Grain in the city of Chicago, or the person acting as Chief Inspector *pro tem.*, shall deposit, and it is hereby made his duty to deposit all moneys collected by him as fees for the inspection of grain, in a bank to be designated by the commission, to the credit of the Railroad and Warehouse Commissioners of Illinois, and immediately forward by mail to the commission at its office a duplicate of the deposit ticket, certified to by the teller of the bank.

B. Money deposited under rule "A" shall be drawn out by checks made to the order of the Chief Inspector of Grain in Chicago, or the person acting as Chief Inspector *pro tem.*, which checks shall be made only by order of the Railroad and Warehouse Commission, regularly convened, and shall each be signed, officially, by the chairman and secretary of the commission.

Resolved, Until otherwise ordered, the Chief Inspector of Grain in Chicago, or the person acting as Chief Inspector *pro tem.*, shall deposit all moneys collected by him as fees for the inspection of grain, in the Illinois Trust and Savings Bank.

RULES FOR THE GOVERNMENT OF THE COMMITTEE OF APPEALS,

1. Any person or persons, owner or owners, consignees, warehouse managers, or shippers taking an appeal from the decision of any grain inspector, as provided by law, shall make his said appeal or complaint in writing, clearly setting forth the kind, quality and locality of the grain in question, the name of the inspector from whose decision he or they take appeal, and the ground upon which said appeal is based,

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and shall file the said complaint or appeal with the Warehouse Registrar, which complaint or appeal must be filed as aforesaid within twenty-four hours after exceptions are taken to the grade made by the inspector whose decision is considered unjust or incorrect; or such neglect to file as aforesaid, or if the grain in dispute shall have passed from the warehouse after inspection or into a warehouse, the right of appeal shall be deemed waived and shall no longer exist.

2. It shall be the duty of the Warehouse Registrar immediately upon receiving an appeal, as aforesaid, to notify the committee of appeals and the Chief Inspector of the party filing the appeal.

3. It shall be the duty of the committee of appeals, on the receipt of any notice, as aforesaid, to proceed immediately to carefully examine the grain in question, and shall give their decision as to the quality or grade of the grain in dispute in accordance with the legal standard under the laws of this state, said decision to be final, and the said Chief Inspector of Grain shall issue a certificate of the grade of the grain in question, and in accordance with the decision of the committee of appeals.

4. In every case of appeal from the decision of the inspection department, if the appeal be on a car load, the appellant shall, at the time of taking his appeal, deposit with the Warehouse Registrar the sum of three dollars, and if on a boat load, the sum of nine dollars, which sum shall be paid to the committee of appeals if the appeal is not sustained. If the appeal be sustained, the Warehouse Registrar shall return to the appellant the amount deposited, and the fee of the committee of appeals shall be paid by the Chief Inspector from the funds of the inspection department. It is further provided that the fee of the committee of appeals shall be three dollars, each, in every case, whether the appeal be on a boat load or a car load, and that the Chief Inspector shall pay to the said committee of appeals, from the funds of the inspection department, the difference between the sum required to be deposited by the appellant and that paid to the committee. [This rule is as amended June 19, 1877.]

5. The Warehouse Registrar shall furnish a clerk for the committee of appeals, who shall keep on file in the office of said Registrar a correct record of all the official acts of said committee, and immediately after each decision of the said committee of appeals, the Wharehouse Registrar shall furnish a correct copy of such decision to the Chief Inspector.

RULES ESTABLISHING A PROPER NUMBER AND STANDARD OF GRADES FOR THE INSPECTION OF GRAIN.

Rule I—Winter Wheat.

No. 1 white winter wheat shall be pure white winter wheat, sound, plump and well cleaned.

No. 2 white winter wheat shall be pure white winter wheat, sound and reasonably clean.

No. 1 red winter wheat shall be pure winter wheat, red, or red and white mixed, sound, plump and well cleaned.

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No. 2 red winter wheat shall be pure winter wheat, red, or red and white mixed, sound and reasonably clean.

Amber wheat, Nos. 1 and 2, shall include the lighter colored varieties of red wheat, quality and condition to be equal to the present standard of Nos. 1 and 2 red winter wheat.

No. 3 winter wheat shall include winter wheat not clean and plump enough for No. 2, and weighing not less than 54 pounds to the measured bushel.

Rejected winter wheat shall include winter wheat, damp, musty, or from any cause so badly damaged as to render it unfit for No. 3.

Rule II—Spring Wheat.

No. 1 hard spring wheat shall be sound, plump and well cleaned.

No. 2 hard spring wheat shall be sound, reasonably clean and of good milling quality.

No. 3 spring wheat shall include all inferior, shrunken, or dirty spring wheat, weighing not less than 53 pounds to the measured bushel.

Rejected spring wheat shall include spring wheat damp, musty, grown, badly bleached, or for any other cause which renders it unfit for No. 3.

In case of mixture of spring and winter wheat it will be called spring wheat, and graded according to the quality thereof.

Black Sea and flinty pfife wheat shall in no case be inspected higher than No. 2, and rice wheat no higher than rejected.

Rule III—Corn.

No. 1 yellow corn shall be yellow, sound, dry, plump and well cleaned.

No. 1 white corn shall be white, sound, dry, plump and well cleaned.

No. 1 corn shall be sound, dry, plump and well cleaned, white and yellow unmixed with red.

High mixed corn shall be three-quarters yellow and equal to No. 2 in condition and quality.

No. 2 corn shall be dry, reasonably clean, but not plump enough for No. 1.

No. 2 kiln dried corn shall be sound, plump and well cleaned white or yellow. All kiln dried corn not good enough for No. 2 kiln dried shall be graded as rejected kiln dried corn.

New high mixed corn shall be three-fourths yellow of any age, reasonably dry and reasonably clean, but not sufficiently dry for high mixed or No. 2.

New mixed corn may be less than three-fourths yellow, of any age, and shall be reasonably dry and reasonably clean, but not sufficiently dry for No. 2.

Rejected—All damp, dirty, or otherwise badly damaged corn shall be graded as rejected.

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Rule IV—Oats.

No. 1 oats shall be white, sound, clean and reasonably free from other grain.

No. 2 white oats shall be three-quarters white and equal to No. 2 in all other respects.

No. 2 oats shall be sound, reasonably clean and reasonably free from other grain.

Rejected—All oats, damp, unsound, dirty, or for any other cause unfit for No. 2, shall be graded as rejected.

Rule V—Rye.

No. 1 rye shall be sound, plump and well cleaned.

No. 2 rye shall be sound, reasonably clean and reasonably free from other grain.

Rejected—All rye damp, musty, dirty, or from any cause unfit for No. 2, shall be graded as rejected.

Rule VI—Barley.

No. 1 barley shall be plump, bright, sound, clean and free from other grain.

No. 2 barley shall be sound, bright, not plump enough for No. 1, reasonably clean and reasonably free from other grain.

Extra No. 3 barley shall include slightly shrunken and otherwise slightly damaged barley, not good enough for No. 2.

No. 3 barley shall include shrunken or otherwise damaged barley weighing not less than 41 pounds to the measured bushel.

Feed barley shall include all barley which is damp or from any cause badly damaged or unfit for malting purposes, or which is largely mixed with other grain.

Rule VII.

The word "new" shall be inserted in each certificate of inspection of a newly harvested crop of oats until the 15th day of August; of rye until the 1st day of September; of wheat until the 1st day of November; and of barley until the 1st day of May of each year. This change shall be construed as establishing a new grade for the time specified, to conform in every particular to the existing grades of grain, excepting the distinctions of "new" and "old."

Rule VIII.

All grain that is warm or that is in a heating condition, or is otherwise unfit for warehousing shall not be graded.

Rule IX.

All inspectors shall make their reasons for grading grain, when necessary, fully known by notations on their books. The weight alone shall not determine the grade.

Rule X.

Each inspector is required to ascertain the weight per measured bushel of each lot of wheat inspected by him and note the same in his book.

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SUPREME COURT OF THE UNITED STATES.

No. 99.—October Term, 1876.

ra Y. Munn and Geo. L. Scott, Plaintiffs in Error,
vs.
The People of the State of Illinois.

In error to the Supreme Court of the State of Illinois.

Mr. Chief Justice WAITE delivered the opinion of the Court.

The question to be determined in this case is whether the general assembly of Illinois can, under the limitations upon the legislative power of the states imposed by the Constitution of the United States, fix by law the maximum of charges for the storage of grain in warehouses at Chicago and other places in the state having not less than one hundred thousand inhabitants, "in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such a manner that the identity of different lots or parcels cannot be accurately preserved."

It is claimed that such a law is repugnant—

1. To that part of sec. 8, Art. I. of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several states;"

2. To that part of sec. 9 of the same article which provides that "no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another," and—

3. To that part of Amendment XIV. which ordains that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

We will consider the last of these objections first.

Every statute is presumed to be constitutional. The courts ought not to declare one to be unconstitutional unless it is clearly so. If there is doubt the expressed will of the legislature should be sustained.

The Constitution contains no definition of the word "deprive," as used in the fourteenth amendment. To determine its signification, therefore, it is necessary to ascertain the effect which usage has given it when employed in the same or a like connection.

While this provision of the amendment is new in the Constitution of the United States, as a limitation upon the powers of the states, it is old as a principle of civilized government. It is found in *Magna Charta* and, in substance if not in form, in nearly or quite all the constitutions that have been from time to time adopted by the several states of the Union. By the fifth amendment it was introduced into the Constitution of the United States as a limitation upon the powers of the national government, and by the fourteenth as a guaranty against any encroachment upon an acknowledged right of citizenship by the legislature of the states.

When the people of the United Colonies separated from Great Britain they changed the form but not the substance of their government. They retained for the purposes of government all the powers of the British Parliament, and, through their state constitutions or other forms of social compact, undertook to give practical effect to such as they deemed necessary for the common good and the security of life and property. All the

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powers which they retained they committed to their respective states, unless in express terms or by implication reserved to themselves. Subsequently, when it was found necessary to establish a national government for national purposes, a part of the powers of the states and of the people of the states was granted to the United States and the people of the United States. This grant operated as a further limitation upon the powers of the states, so that now the governments of the states possess all the powers of the Parliament of England except such as have been delegated to the United States or reserved by the people. The reservations by the people are shown in the prohibitions of the constitutions.

When one becomes a member of society he necessarily parts with some rights or privileges which, as an individual not affected by his relations to others, he might retain. "A body politic," as aptly defined in the preamble of the constitution of Massachusetts, "is a social compact by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good." This does not confer power upon the whole people to control rights which are purely and exclusively private, (Thorpe vs. R. & B. R. R. Co., 27 Vt., 143,) but it does authorize the establishment of laws requiring each citizen to so conduct himself and so use his own property as not unnecessarily to injure another. This is the very essence of government, and has found expression in the maxim *sic utere tuo ut alienum non laedas*. From this source come the police powers, which, as was said by Chief Justice Taney in the License Cases, (5 How., 583,) "are nothing more or less than the powers of government inherent in every sovereignty, * * that is to say, * * the power to govern men and things." Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulations become necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, &c., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day statutes are to be found in many of the states upon some or all these subjects, and we think it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property. With the fifth amendment in force, Congress, in 1820, conferred power upon the city of Washington "to regulate * * the rates of wharfage at private wharves, * * the sweeping of chimneys, and to fix the rates of fees therefor, * * and the weight and quality of bread" (3 Stat., 587, sec. 7); and, in 1848, "to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers."—(9 Stat., 224, sec. 2.)

From this it is apparent that down to the time of the adoption of the fourteenth amendment it was not supposed that statutes regulating the use or even the price of the use of private property necessarily deprived an owner of his property without due process of law. Under some circumstances they may, but not under all. The amendment does not change the law in this particular; it simply prevents the states from doing that which will operate as such a deprivation.

This brings us to inquire as to the principles upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is "affected with a public interest it ceases to be *juris privati* only." This was said by Lord Chief Justice Hale more than two hundred years ago, in his Treatise "De Portibus Maris," (1 Harg. Law Tracts, 78,) and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to the control.

Thus, as to ferries, Lord Hale says, in his Treatise "De jure Maris," (1 Harg. Law Tracts, 6,) the king has "a right of franchise or privilege, that no man may set up a common ferry for all passengers, without a prescription time out of mind, or a charter from the king. He may make a ferry for his own use or the use of his family, but not for the common use of all the king's subjects passing that way; because it doth in consequent tend to common charge, and is become a thing of public interest and use, and every man

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for his passage pays a toll, which is a common charge, and every ferry ought to be under a public regulation, viz., that it give attendance at due times, keep a boat in due order, and take but reasonable toll; for if he fail in these he is fineable." So if one owns the soil and landing places on both banks of a stream he cannot use them for the purposes of a public ferry, except upon such terms and conditions as the body-politic may from time to time impose, and this because the common good requires that all public ways shall be under the control of the public authorities. This privilege or prerogative of the king, who in this connection only represents and gives another name to the body-politic, is not primarily for his profit, but for the protection of the people and the promotion of the general welfare.

And again, as to wharves and wharfingers, Lord Hale, in his Treatise "De Portibus Maris," already cited, says: "A man, for his own private advantage, may, in a port or town, set up a wharf or crane, and may take what rates he and his customers can agree for cranage, wharfage, housellage, pesage; for he doth no more than is lawful for any man to do, viz.: makes the most of his own. * * * If the king or subject have a publick wharf, unto which all persons that come to that port must come and unlade or lade their goods as for the purpose, because they are the wharfs only licensed by the queen, * * * or because there is no other wharf in that port, as it may fall out where a port is newly erected; in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, pesage, &c., neither can they be enhanced to an immoderate rate, but the duties must be reasonable and moderate, though settled by the king's license or charter. For now the wharf and crane and other conveniences are affected with a publick interest, and they cease to be *juris privati* only; as if a man set out a street in new building on his own land, it is now no longer bare private interest, but is affected by a publick interest." This statement of the law by Lord Hale was cited with approbation and acted upon by Lord Kenyon, at the beginning of the present century, in Bolt vs. Stennett, 8 T. R., 606.

And the same has been held as to warehouses and warehousemen. In Aldnutt vs. Inglis, 12 East., 527, decided in 1810, it appeared that the London Dock Company had built warehouses in which wines were taken in store at such rates of charge as the company and the owners might agree upon. Afterwards the company obtained authority under the general warehousing act to receive wines from importers before the duties upon the importation were paid, and the question was whether they could charge arbitrary rates for such storage or must be content with a reasonable compensation. Upon this point Lord Ellenborough said (p. 537): "There is no doubt that the general principle is favored both in law and justice, that every man may fix what price he pleases upon his own property, or the use of it; but if, for a particular purpose, the public have a right to resort to his premises and make use of them, and he have a monopoly in them for that purpose, if he will take the benefit of that monopoly, he must, as an equivalent, perform the duty attached to it on reasonable terms. The question then is, whether, circumstanced as this company is by the combination of the warehousing act with the act by which they were originally constituted, and with the actually existing state of things in the port of London, whereby they alone have the warehousing of these wines, they be not, according to the doctrine of Lord Hale, obliged to limit themselves to a reasonable compensation for such warehousing. And according to him, whenever the accident of time casts upon a party the benefit of having a legal monopoly of landing goods in a public port, as where he is the owner of the only wharf authorized to receive goods which happens to be built in a port newly erected, he is confined to take reasonable compensation only for the use of the wharf." And further on (p. 539): "It is enough that there exists in the place and for the commodity in question a virtual monopoly of the warehousing for this purpose, on which the principle of law attaches as laid down by Lord Hale in the passage referred to, [that from 'De Portibus Maris,' already quoted] which includes the good sense as well as the law of the subject." And in the same case, Le Blanc, J., said (p. 541): "Then, admitting these warehouses to be private property, and that the company might discontinue this application of them, or that they might have made what terms they pleased in the first instance, yet having as they now have this monopoly, the question is, whether the warehouses be not private property clothed with a public right, and if so, the principle of law attaches upon them. The privilege, then, of bonding these wines being at present confined by the act of Parliament to the company's warehouses, is it not the privilege of the public, and shall not that which is for the good of the public attach on the monopoly, that they shall not be bound to pay an arbitrary but a reasonable rent? But upon this record the company resist having their demand for warehouse rent confined within any limit, and though it does not follow that the rent in fact fixed by them is unreasonable, they do not choose to insist on its being reasonable for the purpose of raising the question. For this purpose, therefore, the

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question may be taken to be, whether they may claim an unreasonable rent But though this be private property, yet the principle laid down by Lord Hale attaches upon it, that when private property is affected with a public interest it ceases to be *juris privati* only; and in case of its dedication to such a purpose as this, the owners cannot take arbitrary and excessive duties, but the duties must be reasonable."

We have quoted thus largely the words of these eminent expounders of the common law, because, as we think, we find in them the principle which supports the legislation we are now examining. Of Lord Hale it was once said by a learned American judge: "In England, even on rights of prerogative, they scan his words with as much care as if they had been found in Magna Charta, and the meaning once ascertained, they do not trouble themselves to search any further."—(6 Cowen, 536, note.)

In later times the same principle came under consideration in the Supreme Court of Alabama. That court was called upon, in 1841, to decide whether the power granted to the city of Mobile to regulate the weight and price of bread was unconstitutional, and it was contended that "it would interfere with the right of the citizen to pursue his lawful trade or calling in the mode his judgment might dictate," but the court said, "there is no motive, * * * for this interference on the part of the legislature with the lawful actions of individuals or the mode in which private property shall be enjoyed, unless such calling affects the public interest, or private property is employed in a manner which directly affects the body of the people. Upon this principle, in this state, tavern-keepers are licensed; * * * and the county court is required at least once a year to settle the rates of inn-keepers. Upon the same principle is founded the control which the legislature has always exercised in the establishment and regulation of mills, ferries, bridges, turnpike roads, and other kindred subjects."—(Mobile vs. Yuille, 3 Ala., N. S., 140.)

From the same source comes the power to regulate the charges of common carriers, which was done in England as long ago as the third year of the reign of William and Mary and continued until within a comparatively recent period. And in the first statute we find the following suggestive preamble, to wit: "And whereas divers wagoners and other carriers, by combination amongst themselves, have raised the prices of carriage of goods in many places to excessive rates, to the great injury of the trade: Be it, therefore, enacted," &c.—(3 W. & M., chap. 12, sec. 24, 3 Statutes at Large (Great Britain), 481.) Common carriers exercise a sort of public office and have duties to perform in which the public is interested.—(New Jersey Nav. Co. vs. Merchant's Bk., 6 How., 382.) Their business is, therefore, "affected with a public interest" within the meaning of the doctrine which Lord Hale has so forcibly stated.

But we need not go further. Enough has already been said to show that when private property is devoted to a public use it is subject to public regulation. It remains only to ascertain whether the warehouses of these plaintiffs in error and the business which is carried on there come within the operation of this principle.

For this purpose we accept as true the statements of fact contained in the elaborate brief of one of the counsel of the plaintiffs in error. From these it appears that "the great producing region of the west and northwest sends its grain by water and rail to Chicago, where the greater part of it is shipped by vessel for transportation to the seaboard, by the great lakes, and some of it is forwarded by railway to the eastern ports. * * * Vessels to some extent, are loaded in the Chicago harbor and sailed through the St. Lawrence directly to Europe. * * * The quantity [of grain] received in Chicago has made it the greatest grain market in the world. This business has created a demand for means by which the immense quantity of grain can be handled or stored, and these have been found in grain warehouses, which are commonly called *elevators*, because the grain is *elevated* from the boat or car, by machinery operated by steam, into the bins prepared for its reception; and *elevated* from the bins, by a like process, into the vessel or car which is to carry it on. * * * In this way the largest traffic between the citizens of the country north and west of Chicago, and the citizens of the country lying on the Atlantic coast north of Washington, is in grain which passes through the elevators of Chicago. In this way the trade in grain is carried on by the inhabitants of seven or eight of the great states of the west with four or five of the states lying on the seashore, and forms the largest part of inter-state commerce in these states. The grain warehouses or elevators in Chicago are immense structures, holding from 300,000 to 1,000,000 bushels at one time, according to size. They are divided into bins of large capacity and great strength. * * * They are located with the river harbor on one side, and the railway tracks on the other, and the grain is run through them from car to vessel, or boat to car, as may be demanded in the course of business. It has been found impossible to preserve each owner's grain separate, and this has given rise to a system of inspection and grading, by which the grain of different owners is

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mixed, and receipts issued for the number of bushels which are negotiable, and redeemable in like kind, upon demand. This mode of conducting the business was inaugurated more than twenty years ago and has grown to immense proportions. The railways have found it impracticable to own such elevators, and public policy forbids the transaction of such business by the carrier; the ownership has, therefore, been by private individuals, who have embarked their capital and devoted their industry to such business as a private pursuit."

In this connection it must also be borne in mind that although in 1874 there were in Chicago fourteen warehouses adapted to this particular business and owned by about thirty persons, nine business firms controlled them, and that the prices charged and received for storage were such "as have been from year to year agreed upon and established by the different elevators or warehouses in the city of Chicago, and which rates have been annually published in one or more newspapers printed in said city, in the month of January in each year, as the established rates for the year then next ensuing such publication." Thus it is apparent that all the elevating facilities through which these vast productions "of seven or eight great states of the west" must pass on the way "to four or five of the states on the seashore," *may* be a "virtual" monopoly.

Under such circumstances it is difficult to see why, if the the common carrier, or the miller, or the ferryman, or the innkeeper, or the wharfinger, or the baker, or the cartman, or the hackney-coachman pursues a public employment and exercises "a sort of public office," these plaintiffs in error do not. They stand, to use again the language of their counsel, in the very "gateway of commerce," and take toll from all who pass. Their business most certainly "tends to a common charge, and is become a thing of public interest and use." Every bushel of grain for its passage "pays a toll, which is a common charge," and, therefore, according to Lord Hale, every such warehouseman "ought to be under public regulation, viz., that he * * take but reasonable toll." Certainly if any business can be clothed "with a public interest and cease to be *juris privati* only," this has been. It may not be made so by the operation of the constitution of Illinois or this statute, but it is by the facts.

We also are not permitted to overlook the fact that, for some reason, the people of Illinois, when they revised their constitution in 1870, saw fit to make it the duty of the general assembly to pass laws "for the protection of producers, shippers, and receivers of grain and produce," (Art. XIII., sec. 7,) and by sec. 5 of the same article to require all railroad companies receiving and transporting grain in bulk or otherwise to deliver the same at any elevator to which it might be consigned, that could be reached by any track that was or could be used by such company, and that all railroad companies should permit connections to be made with their tracks, so that any public warehouse, &c., might be reached by the cars on their railroads. This indicates very clearly that during the twenty years in which this peculiar business had been assuming its present "immense proportions," something had occurred which led the whole body of the people to suppose that remedies such as are usually employed to prevent abuses by virtual monopolies might not be inappropriate here. For our purposes we must assume that if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us the question is one of power, not of expediency. If no state of circumstances could exist to justify such a statute, then we may declare this one void, because in excess of the legislative power of the state. But if it could, we must presume it did. Of the propriety of legislative interference within the scope of legislative power the legislature is the exclusive judge.

Neither is it a matter of any moment that no precedent can be found for a statute precisely like this. It is conceded that the business is one of recent origin; that its growth has been rapid, and that it is already of great importance. And it must also be conceded that it is a business in which the whole public has a direct and positive interest. It presents, therefore, a case for the application of a long known and well established principle in social science, and this statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel these owners to grant the public an interest in their property, but to declare their obligations if they use it in this particular manner.

It matters not in this case that these plaintiffs in error had built their warehouses and established their business before the regulations complained of were adopted. What they did was from the beginning subject to the power of the body-politic to require them to conform to such regulations as might be established by the proper authorities for the common good. They entered upon their business and provided themselves with the means to carry it on subject to this condition. If they did not wish to submit themselves to such interference, they should not have clothed the public with an interest in their concerns. The same principle applies to them that does to the proprietor of a

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hackney-carriage, and as to him it has never been supposed that he was exempt from regulating statutes or ordinances because he had purchased his horses and carriage and established his business before the statute or the ordinance was adopted.

It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, and that what is reasonable is a judicial and not a legislative question.

As has already been shown, the practice has been otherwise. In countries where the common-law prevails, it has been customary from time immemorial for the legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. Undoubtedly, in mere private contracts, relating to matters in which the public has no interest, what is reasonable must be ascertained judicially. But this is because the legislature has no control over such a contract. So, too, in matters which do affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable. The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum of charge, as one of the means of regulation, is implied. In fact, the common law rule, which requires the charge to be reasonable, is itself a regulation as to price. Without it the owner could make his rates at will and compel the public to yield to his terms or forego the use.

But a mere common-law regulation of trade or business may be changed by statute. A person has no property, no vested interest in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process, but the law itself as a rule of conduct may be changed at the will or even at the whim of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. To limit the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, is only changing a regulation which existed before. It establishes no new principle in the law, but only gives a new effect to an old one.

We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts.

After what has already been said it is unnecessary to refer at length to the effect of the other provision of the fourteenth amendment which is relied upon, viz., that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Certainly it cannot be claimed that this prevents the state from regulating the fares of hackmen or the charges of draymen in Chicago, unless it does the same thing in every other place within its jurisdiction. But, as has been seen, the power to regulate the business of warehouses depends upon the same principle as the power to regulate hackmen and draymen, and what cannot be done in the one case in this particular cannot be done in the other.

We come now to consider the effect upon this statute of the power of Congress to regulate commerce.

It was very properly said in the case of the State Tax on Railway Gross Receipts, 15 Wall., 293, that "it is not everything that affects commerce that amounts to a regulation of it, within the meaning of the Constitution." The warehouses of these plaintiffs in error are situated and their business carried on exclusively within the limits of the State of Illinois. They are used as instruments by those engaged in state, as well as those engaged in inter-state commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain would be transferred from one railroad station to another. Incidentally they may become connected with inter-state commerce, but not necessarily so. Their regulation is a thing of domestic concern, and certainly until Congress acts in reference to their inter-state relations the state may exercise all the powers of government over them, even though in so doing it may indirectly operate upon commerce outside its immediate jurisdiction. We do not say that a case may not arise in which it will be found that a state, under the form of regulating its own affairs, has encroached upon the exclusive domain of Congress in respect to inter-state commerce, but we do say, that upon the facts as they are presented to us in this record, that has not been done.

The remaining objection, to wit, that the statute in its present form is repugnant to section 9, article I. of the Constitution of the United States, because it gives preference to the ports of one state over those of another, may be disposed of by the single re-

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mark that this provision operates only as a limitation of the powers of Congress, and in no respect affects the states in the regulation of their domestic affairs.

We conclude, therefore, that the statute in question is not repugnant to the Constitution of the United States, and that there is no error in the judgment. In passing upon this case we have not been unmindful of the vast importance of the questions involved. This and cases of a kindred character were argued before us more than a year ago by the most eminent counsel, and in a manner worthy of their well-earned reputations. We have kept the cases long under advisement, in order that their decision might be the result of our mature deliberations.

The judgment is affirmed.

(True copy.)

TEST:

D. W. MIDDLETON,
Clerk Supreme Court United States.

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SUPREME COURT OF THE UNITED STATES.

No. 99.—October Term, 1876.

Ira Y. Munn and George L. Scott, Plaintiffs in Error, vs. The People of the State of Illinois. } Error to the Supreme Court of the State of Illinois.

Mr. Justice FIELD dissenting.

I am compelled to dissent from the decision of the court in this case, and from the reasons upon which that decision is founded. The principle upon which the opinion of the majority proceeds is, in my judgment, subversive of the rights of private property, heretofore believed to be protected by constitutional guaranties against legislative interference; and is in conflict with the authorities cited in its support.

The defendants had constructed their warehouse and elevator in 1862 with their own means, upon ground leased by them for that purpose, and from that time until the filing of the information against them they had transacted the business of receiving and storing grain for hire. The rates of storage charged by them were annually established by arrangement with the owners of different elevators in Chicago, and were published in the month of January. In 1870 the State of Illinois adopted a new constitution, and by it "all elevators or storehouses where grain, or other property, is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses."

In April, 1871, the legislature of the state passed an act to regulate these warehouses, thus declared to be public, and the warehousing and inspection of grain, and to give effect to this article of the constitution. By that act public warehouses, as defined in the constitution, were divided into three classes, the first of which embraced all warehouses, elevators or granaries located in cities having not less than one hundred thousand inhabitants, in which grain was stored in bulk, and the grain of different owners was mixed together or stored in such manner that the identity of different lots or parcels could not be accurately preserved. To this class the elevator of the defendants belonged. The act prescribed the maximum of charges, which the proprietor, lessee, or manager of the warehouse was allowed to make for storage and handling of grain, including the cost of receiving and delivering it, for the first thirty days or any part thereof, and for each succeeding fifteen days or any part thereof; and it required him to procure from the circuit court of the county a license to transact business as a public warehouseman, and to give a bond to the people of the state in the penal sum of ten thousand dollars for the faithful performance of his duty as such warehouseman of the first class, and for his full and unreserved compliance with all laws of the state in relation thereto. The license was made revocable by the circuit court upon a summary proceeding for any violation of such laws. And a penalty was imposed upon every person transacting business as a public warehouseman of the first class without first procuring a license, or continuing in such business after his license has been revoked, of not less than one hundred or more than five hundred dollars for each day on which the business was thus carried on. The court was also authorized to refuse for one year to renew the license, or to grant a new one to any person whose license had been revoked. The

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maximum of charges prescribed by the act for the receipt and storage of grain was different from that which the defendants had previously charged, and which had been agreed to by the owners of the grain. More extended periods of storage were required of them than they formerly gave for the same charges. What they formerly charged for the first twenty days of storage, the act allowed them to charge only for the first thirty days of storage; and what they formerly charged for each succeeding ten days after the first twenty, the act allowed them to charge only for each succeeding fifteen days after the first thirty. The defendants, deeming that they had a right to use their own property in such manner as they desired, not inconsistent with the equal right of others to a like use, and denying the power of the legislature to fix prices for the use of their property and their services in connection with it, refused to comply with the act by taking out the license and giving the bond required; but continued to carry on the business and to charge for receiving and storing grain such prices as they had been accustomed to charge, and as had been agreed upon between them and the owners of the grain. For thus transacting their business without procuring a license as required by the act, they were prosecuted and fined, and the judgment against them was affirmed by the supreme court of the state.

The question presented, therefore, is one of the greatest importance: whether it is within the competency of a state to fix the compensation which an individual may receive for the use of his own property in his private business and for his services in connection with it.

The declaration of the constitution of 1870, that private buildings used for private purposes shall be deemed public institutions, does not make them so. The receipt and storage of grain in a building erected by private means for that purpose does not constitute the building a public warehouse. There is no magic in the language, though used by a constitutional convention, which can change a private business into a public one, or alter the character of the building in which the business is transacted. A tailor's or a shoemaker's shop would still retain its private character even though the assembled wisdom of the state should declare by organic act or legislative ordinance that such a place was a public workshop, and that the workmen were public tailors or public shoemakers. One might as well attempt to change the nature of colors by giving them a new designation. The defendants were no more public warehousemen, as justly observed by counsel, than the merchant who sells his merchandise to the public is a public merchant, or the blacksmith who shoes horses for the public is a public blacksmith; and it was a strange notion that by calling them so they would be brought under legislative control.

The supreme court of the state—divided, it is true, by three or two of its members—has held that this legislation was a legitimate exercise of state authority over private business; and the Supreme Court of the United States, two only of its members dissenting, has decided that there is nothing in the Constitution of the United States, or its recent amendments, with impugns its validity. It is, therefore, with diffidence I presume to question the soundness of the decision.

The validity of the legislation was, among other grounds, assailed in the state court as being in conflict with that provision of the state constitution which declares that no person shall be deprived of life, liberty, or property without due process of law, and with that provision of the 14th amendment of the Federal Constitution which imposes a similar restriction upon the action of the state. The state court held in substance that the constitutional provision was not violated so long as the owner was not deprived of the title and possession of his property; and that it did not deny to the legislature the power to make all needful rules and regulations respecting the use and enjoyment of the property, referring in support of the position to instances of its action in prescribing the interest on money, in establishing and regulating public ferries and public mills and fixing the compensation in the shape of tolls, and in delegating power to municipal bodies to regulate the charges of hackmen and draymen, and the weight and price of bread. In this court the legislation was also assailed on the same ground, our jurisdiction arising upon the clause of the fourteenth amendment ordaining that no state shall deprive any person of life, liberty, or property without due process of law. But it would seem from its opinion that the court holds that property loses something of its private character when employed in such a way as to be generally useful. The doctrine declared is that property "becomes clothed with a public interest when used in a manner to make it of public consequence and affect the community at large;" and from such clothing the right of the legislature is deduced to control the use of the property and to determine the compensation which the owner may receive for it. When Sir Matthew Hale, and the sages of the law in his day, spoke of property as affected by a public interest, and ceasing from that cause to be *juris privati* solely, that is, ceasing to be held

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merely in private right, they referred to property dedicated by the owner to public uses, or to property the use of which was granted by the government, or in connection with which special privileges were conferred. Unless the property was thus dedicated, or some right bestowed by the government was held with the property, either by specific grant or by prescription of so long a time as to imply a grant originally, the property was not affected by any public interest so as to be taken out of the category of property held in private right. But it is not in any such sense that the terms "clothing property with a public interest" are used in this case. From the nature of the business under consideration—the storage of grain—which, in any sense in which the words can be used, is a private business, in which the public are interested only as they are interested in the storage of other products of the soil, or in articles of manufacture, it is clear that the court intended to declare that whenever one devotes his property to a business which is useful to the public—"affects the community at large"—the legislature can regulate the compensation which the owner may receive for its use, and for his own services in connection with it. "When, therefore," says the court, "one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to the control." The building used by the defendants was for the storage of grain; in such storage, says the court, the public has an interest; therefore the defendants, by devoting the building to that storage, have granted the public an interest in that use, and must submit to have their compensation regulated by the legislature.

If this be sound law, if there be no protection either in the principles upon which our republican government is founded, or in the prohibitions of the Constitution against such invasion of private rights, all property and all business in the state are held at the mercy of a majority of its legislature. The public has no greater interest in the use of buildings for the storage of grain than it has in the use of buildings for the residences of families, nor, indeed, anything like so great an interest; and according to the doctrine announced, the legislature may fix the rent of all tenements used for residences without reference to the cost of their erection. If the owner does not like the rates prescribed he may cease renting his houses. He has granted to the public, says the court, an interest in the use of the buildings, and "he may withdraw his grant by discontinuing the use: but so long as he maintains the use he must submit to the control." The public is interested in the manufacture of cotton, woollen, and silken fabrics, in the construction of machinery, in the printing and publication of books and periodicals, and in the making of utensils of every variety, useful and ornamental; indeed, there is hardly an enterprise or business engaging the attention and labor of any considerable portion of the community in which the public has not an interest in the sense in which that term is used by the court in its opinion; and the doctrine which allows the legislature to interfere with and regulate the charges which the owners of property thus employed shall make for its use, that is, the rates at which all these different kinds of business shall be carried on, has never before been asserted, so far as I am aware, by any judicial tribunal in the United States.

The doctrine of the state court, that no one is deprived of his property, within the meaning of the constitutional inhibition, so long as he retains its title and possession, and the doctrine of this court, that whenever one's property is used in such a manner as to affect the community at large, it becomes by that fact clothed with a public interest and ceases to be *juris privati* only, appear to me to destroy for all useful purposes the efficacy of the constitutional guaranty. All that is beneficial in property arises from its use, and the fruits of that use; and whatever deprives a person of them deprives him of all that is desirable or valuable in the title and possession. If the constitutional guaranty extends no further than to prevent a deprivation of title and possession, and allows a deprivation of use and the fruits of that use, it does not merit the encomiums it has received. Unless I have misread the history of the provision now incorporated into all our state constitutions, and by the fifth and fourteenth amendments into our Federal Constitution, and have misunderstood the interpretation it has received, it is not thus limited in its scope and thus impotent for good. It has a much more extended operation than either court, state or federal, has given to it. The provision, it is to be observed, places property under the same protection as life and liberty. Except by due process of law no state can deprive any person of either. The provision has been supposed to secure to every individual the essential conditions for the pursuit of happiness, and for that reason has not been heretofore, and should never be, construed in any narrow or restricted sense.

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No state "shall deprive any person of life, liberty, or property without due process of law," says the 14th amendment to the Constitution. By the term "life," as here used, is not meant mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. It equally prohibits legislation against the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world. The deprivation of whatever God has given with life, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision.

By the term "liberty," as used in the provision, something more is meant than mere freedom from physical restraint or the bounds of a prison. It means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness—that is, to pursue such callings and avocations as may be most suitable to develop his capacities and give to them their highest enjoyment.

The same liberal construction which is required for the protection of life and liberty, in all particulars in which life and liberty are of any value, should be applied to the protection of private property. If the legislature of a state, under pretense of providing for the public good, or for any other reason, can determine, against the consent of the owner, the uses to which private property shall be devoted, or the prices which the owner shall receive for its uses, it can deprive him of the property as completely as by a special act for its confiscation or destruction. If, for instance, the owner is prohibited from using his building for the purposes for which it was designed, it is of little consequence that he is permitted to retain the title and possession. Or if he is compelled to take as compensation for its use less than the expenses to which he is subjected by its ownership, he is for all practical purposes deprived of the property, as effectually as if the legislature had ordered his forcible dispossession. If it be admitted that the legislature has any control over the compensation, the extent of that compensation becomes a mere matter of legislative discretion. The amount fixed will operate as a partial destruction of the value of the property, if it fall below the amount which the owner would obtain by contract, and practically, as a complete destruction, if it be less than the cost of retaining its possession. There is, indeed, no protection of any value under the constitutional provision which does not extend to the use and income of the property as well as to its title and possession.

This court has heretofore held in many instances that a constitutional provision intended for the protection of rights of private property should be liberally construed. It has so held in the numerous cases where it has been called upon to give effect to the provision prohibiting the states from legislation impairing the obligation of contracts; the provision being construed not only to secure the contract itself from direct attack, but all the essential incidents which give it value and enable its owner to enforce it. Thus, in Bronson vs. Kinzie, reported in the 1st of Howard, it was held that an act of the legislature of Illinois giving to a mortgagor twelve months within which to redeem his mortgaged property from a judicial sale, and prohibiting its sale for less than two-thirds of its appraised value, was void as applied to mortgages executed prior to its passage. It was contended, in support of the act, that it affected only the remedy of the mortgagee and did not impair the contract; but the court replied that there was no substantial difference between a retrospective law declaring a particular contract to be abrogated and void and one which took away all remedy to enforce it or encumbered the remedy with conditions that rendered it useless or impracticable to pursue it. And referring to the constitutional provision, the court said, speaking through Mr. Chief Justice Taney, that "it would be unjust to the memory of the distinguished men who framed it to suppose that it was designed to protect a mere barren and abstract right, without any practical operation upon the business of life. It was undoubtedly adopted as a part of the Constitution for a great and useful purpose. It was to maintain the integrity of contracts and to secure their faithful execution throughout this Union by placing them under the protection of the Constitution of the United States. And it would but ill become this court, under any circumstances, to depart from the plain meaning of the words used and to sanction a distinction between the right and the remedy which would render this provision illusive and nugatory, mere words of form, affording no protection and producing no practical result."

And in Pumpelly vs. Green Bay Company, reported in the 13th of Wallace, the language of the court is equally emphatic. That case arose in Wisconsin, the constitution of which declares, like the constitutions of nearly all the states, that private property shall not be taken for public use without just compensation; and this court held that the flooding of one's land by a dam constructed across a river under a law of the state

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was a taking within the prohibition, and required compensation to be made to the owner of the land thus flooded. The court, speaking through Mr. Justice Miller, said: "It would be a very curious and unsatisfactory result if, in construing a provision of constitutional law, always understood to have been adopted for protection and security to the rights of the individual as against the government, and which has received the commendation of jurists, statesmen, and commentators, as placing the just principles of the common law on that subject beyond the power of ordinary legislation to change or control them, it shall be held that if the government refrains from the absolute conversion of real property to the uses of the public it can destroy its value entirely, can inflict irreparable and permanent injury to any extent, can, in effect, subject it to total destruction without making any compensation, because, in the narrowest sense of the word, it is not *taken* for the public use. Such a construction would pervert the constitutional provision into a restriction on the rights of the citizen, as those rights stood at the common law, instead of the government, and make it an authority for invasion of private right under the pretext of the public good, which had no warrant in the laws or practices of our ancestors."* The views expressed in these citations, applied to this case, would render the constitutional provision invoked by the defendants effectual to protect them in the uses, income, and revenues of their property as well as in its title and possession. The construction actually given by the state court and by this court makes the provision, in the language of Taney, a protection to "a mere barren and abstract right without any practical operation upon the business of life," and renders it "illusive and nugatory, mere words of form, affording no protection and producing no practical result.

The power of the state over the property of the citizen under the constitutional guaranty is well defined. The state may take his property for public uses upon just compensation being made therefor. It may take a portion of his property by way of taxation for the support of the government. It may control the use and possession of his property so far as may be necessary for the protection of the rights of others, and to secure to them the equal use and enjoyment of their property. The doctrine that each one must so use his own as not to injure his neighbor—*sic utere tuo ut alienum non lædas*—is the rule by which every member of society must possess and enjoy his property; and all legislation essential to secure this common and equal enjoyment is a legitimate exercise of state authority. Except in cases where property may be destroyed to arrest a conflagration or the ravages of pestilence, or be taken under the pressure of an immediate and overwhelming necessity to prevent a public calamity, the power of the state over the property of the citizen does not extend beyond such limits.

It is true that the legislation which secures to all protection in their rights and the equal use and enjoyment of their property embraces an almost infinite variety of subjects. Whatever affects the peace, good order, morals, and health of the community comes within its scope, and every one must use and enjoy his property subject to the restrictions which such legislation imposes. What is termed the police power of the state, which from the language often used respecting it one would suppose to be an undefinded and irresponsible element in government, can only interfere with the conduct of individuals in their intercourse with each other, and in the use of their property, so far as may be required to secure these objects. The compensation which the owners of property, not having any special rights or privileges from the government in connection with it, may demand for its use, or for their own services in union with it, forms no element of consideration in prescribing regulations for that purpose. If one construct a building in a city, the state, or the municipality exercising a delegated power from the state, may require its walls to be of sufficient thickness for the uses intended; it may forbid the employment of inflammable materials in its construction so as not to endanger the safety of his neighbors; if designed as a theater, church, or public hall, it may prescribe ample means of egress so as to afford facility for escape in case of accident; it may forbid the storage in it of powder, nitro-glycerine, or other explosive material; it may require its occupants daily to remove decayed vegetable and animal matter which would otherwise accumulate and engender disease; it may exclude from it all occupations and business calculated to disturb the neighborhood or infect the air. Indeed, there is no end of regulations with respect to the use of property which may not be legitimately prescribed, having for their object the peace, good order, safety and health of the community, thus securing to all the equal enjoyment of their property; but in establishing these regulations it is evident that compensation to the owner for the use of his property, or for his services in union with it, is not a matter of any importance;

*Pumpelly vs. Green Bay Co., 13 Wall., 177.

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whether it be one sum or another does not affect the regulation, either in respect to its utility or mode of enforcement. One may go in like manner through the whole round of regulations authorized by legislation, state or municipal, under what is termed the police power, and in no instance will he find that the compensation of the owner for the use of his property has any influence in establishing them. It is only where some right or privilege is conferred by the government or municipality upon the owner which he can use in connection with his property, or by means of which the use of his property is rendered more valuable to him, or he thereby enjoys an advantage over others, that the compensation to be received by him becomes a legitimate matter of regulation. Submission to the regulation of compensation in such cases is an implied condition of the grant, and the state in exercising its power of prescribing the compensation only determines the conditions upon which its concession shall be enjoyed. When the privilege ends the power of regulation ceases.

Jurists and writers on public law find authority for the exercise of this police power of the state and the numerous regulations which it prescribes in the doctrine already stated, that every one must use and enjoy his property consistently with the rights of others and the equal use and enjoyment by them of their property. "The police power of the state," says the Supreme Court of Vermont, "extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property in the state. According to the maxim, *sic utere tuo ut alienum non lædas*, which being of universal application, it must, of course, be within the range of legislative action *to define the mode and manner in which every one may so use his own as not to injure others.*"* "We think it a settled principle growing out of the nature of well ordered civil society," says the Supreme Court of Massachusetts, "that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it *shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community.*"† In his commentaries, after speaking of the protection afforded by the Constitution to private property, Chancellor Kent says: "But though property be thus protected, it is still to be understood that the lawgiver has the right to prescribe the mode and manner of using it, *so far as may be necessary to prevent the abuse of the right, to the injury or annoyance of others, or of the public.* The government may, by general regulations, interdict such uses of property as would create nuisances and become dangerous to the lives, or health, or peace, or comfort of the citizens. Unwholesome trades, slaughter-houses, operations offensive to the senses, the deposit of powder, the application of steam power to propel cars, the building with combustible materials, and the burial of the dead may all be interdicted by law, in the midst of dense masses of population, *on the general and rational principle that every person ought so to use his property as not to injure his neighbors, and that private interests must be made subservient to the general interests of the community.*"‡

The italics in these citations are mine. The citations show what I have already stated to be the case, that the regulations which the state, in the exercise of its police power, authorizes with respect to the use of property are entirely independent of any question of compensation for such use or for the services of the owner in connection with it.

There is nothing in the character of the business of the defendants as warehousemen which called for the interference complained of in this case. Their buildings are not nuisances; their occupation of receiving and storing grain infringes upon no rights of others, disturbs no neighborhood, infects not the air, and in no respect prevents others from using and enjoying their property as to them may seem best. The legislation in question is nothing less than a bold assertion of absolute power by the state to control at its discretion the property and business of the citizen, and fix the compensation he shall receive. The will of the legislature is made the condition upon which the owner shall receive the fruits of his property and the just reward of his labor, industry, and enterprise. "That government," says Story, "can scarcely be deemed to be free where the rights of property are left solely dependent upon the will of a legislative body without any restraint. The fundamental maxim of a free government seem to require that the rights of personal liberty and private property should be held sacred." ‖ The decision of the court in this case gives unrestrained license to legislative will.

The several instances mentioned by counsel in the argument and by the court in its opinion, in which legislation has fixed the compensation which parties may receive for the use of their property and services, do not militate against the views I have expressed of the power of the state over the property of the citizen. They were mostly cases of

* Thorpe vs. Rutland & Burlington R. R. Co., 27 Vt., 149.
† Commonwealth vs. Alger, 7 Cushing, 84.
‡ 2 Kent, 340.
‖ Wilkeson vs. Leland, 2 Peters, 657.

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pulbic ferries, bridges, and turnpikes, of wharfingers, hackmen, and draymen, and of interest on money. In all these cases, except that of interest on money, which I shall presently notice, there was some special privilege granted by the state or municipality; and no one, I suppose, has ever contended that the state had not a right to prescribe the conditions upon which such privilege should be enjoyed. The state in such cases exercises no greater right than an individual may exercise over the use of his own property when leased or loaned to others. The conditions upon which the privilege shall be enjoyed being stated or implied in the legislation authorizing its grant, no right is, of course, impaired by their enforcement. The recipient of the privilege in effect stipulates to comply with the conditions. It matters not how limited the privilege conferred, its acceptance implies an assent to the regulation of its use and the compensation for it. The privilege which the hackman and drayman have to the use of stands on the public streets, not allowed to the ordinary coachman or laborer with teams, constitutes a sufficient warrant for the regulation of their fares. In the case of the warehousmen of Chicago no right or privilege is conferred by the government upon them, and hence no assent of theirs can be alleged to justify any interference with their charges for the use of their property.

The quotations from the writings of Sir Matthew Hale, so far from supporting the positions of the court, do not recognize the interference of the government even to the extent which I have admitted to be legitimate. They state merely that the franchise of a public ferry belongs to the king, and cannot be used by the subject except by license from him, or prescription time out of mind; and that when the subject has a public wharf by license from the king, or from having dedicated his private wharf to the public, as in the case of a street opened by him through his own land, he must allow the use of the wharf for reasonable and moderate charges. Thus, in the first quotation which is taken from his treatise "De Jure Maris," Hale says that the king has "a right of franchise or privilege, that no man may set up a common ferry for all passengers without a prescription time out of mind or a charter from the king. He may make a ferry for his own use or the use of his family but not for the common use of all the king's subjects passing that way; because it doth in consequent tend to a common charge, and is become a thing of public interest and use, and every man for his passage pays a toll, which is a common charge, and every ferry ought to be under a public regulation, viz., that it give attendance at due times, keep a boat in due order, and take but reasonable toll; for if he fails in these he is fineable." Of course one who obtains a license from the king to establish a public ferry at which "every man for his passage pays a toll" must take it on condition that he charge only reasonable toll, and indeed subject to such regulations as the king may prescribe.

In the second quotation which is taken from his treatise "De Portibus Maris," Hale says: "A man, for his own private advantage, may, in a port or town, set up a wharf or crane, and may take what rates he and his customers can agree for cranage, wharfage, housellage, pesage; for he doth no more than is lawful for any man to do, viz., makes the most of his own.——If the king or subject have a publick wharf, unto which all persons that come to that port must come and unlade or lade their goods as for the purpose, because they are the wharves only licensed by the queen,———or because there is no other wharf in that port, as it may fall out where a port is newly erected, in that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, pesage, etc., neither can they be enhanced to an immoderate rate, but the duties must be reasonable and moderate, though settled by the king's license or charter. For now the wharf and crane and other conveniences are affected with a publick interest, and they cease to be *juris privati* only; as if a man set out a street in new building on his own land, it is now no longer bare private interest, but is affected by the publick interest." The purport of which is that if one have a public wharf, by license from the government or his own dedication, he must exact only reasonable compensation for its use. By its dedication to public use a wharf is as much brought under the common-law rule of subjection to reasonable charges as it would be if originally established or licensed by the crown. All property dedicated to public use by an individual owner, as in the case of land for a park or street, falls at once, by force of the dedication, under the law governing property appropriated by the government for similar purposes.

I do not doubt the justice of the encomiums passed upon Sir Matthew Hale as a learned jurist of his day, but the pertinency of his observations upon *public* ferries and *public* wharfs, found in his treatises on the Rights of the Sea and on the Ports of the Sea, to the questions presented by the warehousing law of Illinois undertaking to regulate the compensation which the owners of *private* property used for *private* purposes shall receive, is not strikingly obvious.

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The principal authority cited in support of the ruling of the court is that of Alnutt vs. Inglis, decided by the King's Bench and reported in the 12th of East. But that case, so far from sustaining the ruling, establishes, in my judgment, the doctrine that every one has a right to charge for his property, or for its use, whatever he pleases, unless he enjoys in connection with it some right or privilege from the government not accorded to others; and even then it only decides what is above stated in the quotations from Sir Matthew Hale, that he must submit, so long as he retains the right or privilege, to reasonable rates. In that case the London Dock Company, under certain acts of Parliment, possessed the exclusive right of receiving imported goods into their warehouses before the duties were paid; and the question was whether the company was bound to receive them for a reasonable reward or whether it could arbitrarily fix its compensation. In deciding the case, the Chief Justice, Lord Ellenborough, said: "There is no doubt that the general principle is favored both in law and justice, that every man may fix what price he pleases upon his own property, or the use of it; but if, for a particular purpose, the public have a right to resort to his premises and make use of them, and he have a monopoly in them for that purpose, if he will take the benefit of that monoply, he must, as an equivalent, perform the duty attached to it on reasonable terms." And coming to the conclusion that the company's warehouses were invested with "the monopoly of a public privilege," he held that by law the company must confine itself to take reasonable rates; and added that if the crown should thereafter think it advisable to extend the privilege more generally to other persons and places, so that the public would not be restrained from exercising a choice of warehouses for the purpose, the company might be enfranchised from the restriction which attached to a monopoly; but so long as its warehouses were the only places which could be resorted to for that purpose the company was bound to let the trade have the use of them for a reasonable hire and reward. The other judges of the court placed their concurrence in the decision upon the ground that the company possessed a legal monopoly of the business, having the only warehouses where goods imported could be lawfully received without previous payment of the duties. From this case it appears that it is only where some privilege in the bestowal of the government is enjoyed in connection with the property, that it is affected with a public interest in any proper sense of the terms. It is the public privilege conferred with the use of the property which creates the public interest in it.

In the case decided by the Supreme Court of Alabama, where a power granted to the city of Mobile to license bakers and to regulate the weight and price of bread was sustained so far as regulating the weight of the bread was concerned, no question was made as to the right to regulate the price.* There is no doubt of the competency of the state to prescribe the weight of a loaf of bread, as it may declare what weight shall constitute a pound or a ton. But I deny the power of any legislature under our government to fix the price which one shall receive for his property of any kind. If the power can be exercised as to one article it may as to all articles, and the prices of everything from a calico gown to a city mansion may be subject to legislative direction.

Other instances of a similar character may no doubt be cited of attempted legislative interference with the rights of property. The act of Congress of 1820, mentioned by the court, is one of them. There Congress undertook to confer upon the city of Washington power to regulate the rates of wharfage at private wharves, and the fees for sweeping chimneys. Until some authoritative adjudication is had upon these and similar provisions I must adhere, notwithstanding the legislation, to my opinion that those who own property have the right to fix the compensation at which they will allow its use, and that those who control services have a right to fix the compensation at which they will be rendered. The chimney-sweeps may, I think, safely claim all the compensation which they can obtain by bargain for their work. In the absence of any contract for property or services the law allows only a reasonable price or compensation, but what is a reasonable price in any case will depend upon a variety of considerations, and is not a matter for legislative determination.

The practice of regulating by legislation the interest receivable for the use of money, when considered with reference to its origin, is only the assertion of a right of the government to control the extent to which a privilege granted by it may be exercised and enjoyed. By the ancient common law it was unlawful to take any money for the use of money; all who did so were called usurers, a term of great reproach; and were exposed to the censure of the church. And if after the death of a person it was discovered that he had been an usurer whilst living, his chattels were forfeited to the king, and his lands escheated to the lord of the fee. No action could be maintained on any promise to pay for the use of money, because of the unlawfulness of the contract. Whilst the common law thus condemned all usury, Parliament interfered and made it lawful to take a

*3 Ala., 137.

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limited amount of interest. It was not upon the theory that the legislature could arbitrarily fix the compensation which one could receive for the use of property, which by the general law was the subject of hire for compensation, that Parliament acted, but in order to confer a privilege which the common law denied. The reasons which led to this legislation originally have long since ceased to exist, and if the legislation is still persisted in, it is because a long acquiescence in the exercise of a power, especially when it was rightfully assumed in the first instance, is generally received as sufficient evidence of its continued lawfulness.†

There was also recognized in England by the ancient common law certain privileges as belonging to the lord of the manor, which grew out of the state of the country, the condition of the people, and the relation existing between him and his tenants under the feudal system. Among these was the right of the lord to compel all the tenants within his manor to grind their corn at his mill. No one, therefore, could set up a mill except by his license or by the license of the crown, unless he claimed the right by prescription, which presupposed a grant from the lord or crown, and, of course, with such license went the right to regulate the tolls to be received.* Hence originated the doctrine which at one time obtained generally in this country, that there could be no mill to grind corn for the public without a grant or license from the public authorities. It is still, I believe, asserted in some states. This doctrine being recognized, all the rest followed. The right to control the toll accompanied the right to control the establishment of the mill.

It requires no comment to point out the radical differences between the cases of public mills and interest on money and that of the warehouses in Chicago. No prerogative or privilege of the crown to establish warehouses was ever asserted at the common law. The business of a warehouseman was at common law a private business, and is so in its nature. It has no special privileges connected with it, nor did the law ever extend to it any greater protection than it extended to all other private business. No reason can be assigned to justify legislation interfering with the legitimate profits of that business that would not equally justify an intermeddling with the business of every man in the community, so soon at least as his business became generally useful.

I am of opinion that the judgment of the Supreme Court of Illinois should be reversed.

STRONG, *J.*—When the judgment in this case was announced by direction of a majority of the court, it was well known by all my brethren that I did not concur in it. It had been my purpose to prepare a dissenting opinion, but I found no time for the preparation, and I was reluctant to dissent in such a case without stating my reasons. Mr. Justice Field has now stated them as fully as I can, and I concur in what he has said.

(True copy.)

TEST: D. W. MIDDLETON,
Clerk Supreme Court United States.

[For the above decision, and dissenting opinion, see iv Otto, vol. 94 U. S. S. C., beginning p. 113.]

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY *v.* IOWA.

1. Railroad companies are carriers for hire. Engaged in a public employment affecting the public interest, they are, unless protected by their charters, subject to legislative control as to their rates of fare and freight.
2. The Burlington and Missouri River Railroad Company has, within the scope of the authority conferred by its charter, and subject to the limitations thereby imposed, the power of a natural person to make contracts in reference to its business. Like such person, it, or its assignee, the plaintiff in error, is, under the same circumstances, subject at all times to such laws as the general assembly of the State may from time to time enact.
3. A power of government which actually exists is not lost by non-user. The fact, therefore, that the power of regulating the maximum rates of fare and freight was not exercised for more than twenty years after the incorporation of that company is unimportant. Nor does it affect the case, that, before the power was exercised, the company had pledged its income as security for the payment of debts incurred, and had leased its road to a tenant that relied upon the earnings for the means of paying the stipulated rent. It could neither grant nor pledge more than it had, and its pledgee or tenant took the property subject to the exercise by the State of the same powers of regulation which might have been exercised over the company itself.

† 10 Bacon's Abridgment, 264. The statute of 13 Elizabeth, C. 8, which allows ten per cent. interest, recites "that all usury being forbidden by the law of God is sin and detestable;" and the statute of 21 James the First, reducing the rate to eight per cent., provided that nothing in the law should be "construed to allow the practice of usury in point of religion or conscience," a clause introduced, it is said, to satisfy the bishops, who would not vote for the bill without it.

* Woolrych on the Law of Waters, chap. VI., Of Mills.

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4. The act of the general assembly of the State of Iowa, entitled "An Act to establish reasonable maximum rates of charges for the transportation of freight and passengers on the different roads of this State," approved March 23, 1874, is not in conflict with sect. 4, art. 1, of the Constitution of Iowa, which provides that "all laws of a general nature shall have a uniform operation," and that "the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens;" nor is it a regulation of inter-state commerce.

APPEAL from the Circuit Court of th United States for the District of Iowa.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Railroad companies are carriers for hire. They are incorporated as such, and given extraordinary powers, in order that they may the better serve the public in that capacity. They are, therefore, engaged in a public employment affecting the public interest, and, under the decision in *Munn* v. *Illinois*, *supra*, p. 113, subject to legislative control as to their rates of fare and freight, unless protected by their charters.

The Burlington and Missouri River Railroad Company, the benefit of whose charter the Chicago, Burlington and Quincy Railroad Company now claims, was organized under the general corporation law of Iowa, with power to contract, in reference to its business, the same as private individuals, and to establish by-laws and make all rules and regulations deemed expedient in relation to its affairs, but being subject, nevertheless, at all times to such rules and regulations as the general assembly of Iowa might from time to time enact and provide. This is, in substance, its charter, and to that extent it is protected as by a contract; for it is now too late to contend that the charter of a corporation is not a contract within the meaning of that clause in the Constitution of the United States which prohibits a State from passing any law impairing the obligation of a contract. Whatever is granted is secured subject only to the limitations and reservations in the charter or in the laws or constitutions which govern it.

This company, in the transactions of its business, has the same rights, and is subject to the same control, as private individuals under the same circumstances. It must carry when called upon to do so, and can charge only a reasonable sum for the carriage. In the absence of any legislative regulation upon the subject, the courts must decide for it, as they do for private persons, when controversies arise, what is reasonable. But when the legislature steps in and prescribes a maximum of charge, it operates upon this corporation the same as it does upon individuals engaged in a similar business. It was within the power of the company to call upon the legislature to fix permanently this limit, and make it a part of the charter; and, if it was refused, to abstain from building the road and establishing the contemplated business. If that had been done, the charter might have presented a contract against future legislative interference. But it was not; and the company invested its capital, relying upon the good faith of the people and the wisdom and impartiality of legislators for protection against wrong under the form of legislative regulation.

It is a matter of no importance that the power of regulation now under consideration was not exercised for more than twenty years after this company was organized. A power of government which actually exists is not lost by non-user. A good government never puts forth its extraordinary powers, except under circumstances which require it. That government is the best which, while performing all its duties, interferes the least with the lawful pursuits of its people.

In 1691, during the third year of the reign of William and Mary, Parliament provided for the regulation of the rates of charges by common carriers. This statute remained in force, with some amendment, until 1827, when it was repealed, and it has never been re-enacted. No one supposes that the power to restore its provisions has been lost. A change of circumstances seemed to render such a regulation no longer necessary, and it was abandoned for the time. The power was not surrendered. That remains for future exercise, when required. So here, the power of regulation existed from the beginning, but it was not exercised until in the judgment of the body politic the condition of things was such as to render it necessary for the common good.

Neither does it affect the case that before the power was exercised the company had pledged its income as security for the payment of debts incurred, and had leased its road to a tenant that relied upon the earnings for the means of paying the agreed rent. The company could not grant or pledge more than it had to give. After the pledge and after the lease the property remained within the jurisdiction of the State, and continued subject to the same governmental powers that existed before.

The objection that the statute complained of is void because it amounts to a regulation of commerce among the States, has been sufficiently considered in the case of *Munn* v. *Illinois*. This road, like the warehouse in that case, is situated within the limits of a single State. Its business is carried on there, and its regulation is a matter of domestic

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concern. It is employed in State as well as in inter-state commerce, and, until Congress acts, the State must be permitted to adopt such rules and regulations as may be necessary for the promotion of the general welfare of the people within its own jurisdiction, even though in so doing those without may be indirectly affected.

It remains only to consider whether the statute is in conflict with sect. 4, art. 1, of the Constitution of Iowa, which provides that "all laws of a general nature shall have a uniform operation," and that "the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens."

The statute divides the railroads of the State into classes, according to business, and establishes a maximum of rates for each of the classes. It operates uniformly on each class, and this is all the Constitution requires. The Supreme Court of the State, in the case of *McAunich* v. *M. & M. Railroad Co.*, 20 Iowa, 343, in speaking of legislation as to classes, said, "These laws are general and uniform, not because they operate upon every person in the State, for they do not, but because every person who is brought within the relation and circumstances provided for is affected by the law. They are general and uniform in their operation upon all persons in the like situation, and the fact of their being general and uniform is not affected by the number of persons within the scope of their operation." This act does not grant to any railroad company privileges or immunities which, upon the same terms, do not equally belong to every other railroad company. Whenever a company comes into any class, it has all the "privileges and immunities" that have been granted by the statute to any other company in that class.

It is very clear that a uniform rate of charges for all railroad companies in the State might operate unjustly upon some. It was proper, therefore, to provide in some way for an adaptation of the rates to the circumstances of the different roads; and the general assembly, in the exercise of its legislative discretion, has seen fit to do this by a system of classification. Whether this was the best that could have been done is not for us to decide. Our province is only to determine whether it could be done at all, and under any circumstances. If it could, the legislature must decide for itself, subject to no control from us, whether the common good requires that it should be done.

Decree affirmed.

MR. JUSTICE FIELD and MR. JUSTICE STRONG dissented.

[For the above decision, see iv Otto, vol. 94 U. S. S. C., beginning p. 155.]

PEIK *v.* CHICAGO AND NORTHWESTERN RAILWAY COMPANY.

LAWRENCE *v.* SAME.

1. The Chicago and Northwestern Railroad Company was, by its charter, and the charters of other companies consolidated with it, authorized "to demand and receive such sum or sums of money for the transporation of persons and property, and for storage of property, as it shall deem reasonable." The Constitution of Wisconsin, in force when the charters were granted, provides that all acts for the creation of corporations within the State "may be altered or repealed by the legislature at any time after their passage." *Held*, that the legislature had power to prescribe a maximum of charges to be made by said company for transporting persons or property within the State, or taken up outside the State and brought within it, or taken up inside and carried without.
2. Certain Wisconsin railroad corporations were consolidated with others of Illinois on terms which, in effect, required that the consolidated company should, when operating in Wisconsin, be subject to its laws. *Held*, that Wisconsin can legislate for the company in that State precisely as it could have legislated for its own original companies, if no consolidation had taken place.
3. The act of Wisconsin, approved March 11, 1874, entitled "An Act relating to railroads, express and telegraph companies, in the State of Wisconsin," is confined to State commerce, or such inter-state commerce as directly affects the people of Wisconsin. Until Congress shall act in reference to the relations of this consolidated company to inter-state commerce, the regulation of its fares, &c., so far as they are of domestic concern, is within the power of that State.
4. The decison of the Supreme Court of the State of Wisconsin, that said act of March 11, 1874, was no repealed by that entitled "An Act in relation to railroads," approved March 12, 1874, is binding upon this court.
5. Where property has been clothed with a public interest, the legislature may fix a limit to that which shall in law be reasonable for its use.
6. No party to this record can raise the question that the statute of Wisconsin violates the obligation of the consolidated company, under the land grant to the Wisconsin and Superior Railroad Company, to keep the part of its road which formerly belonged to the latter company open as a public highway for the use of the government of the United States, free from toll, &c.

APPEALS from the Circuit Court of the United States for the Western District of Wisconsin.

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MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

These suits present the single question of the power of the legislature of Wisconsin to provide by law for a maximum of charge to be made by the Chicago and North-western Railway Company for fare and freight upon the transportation of persons and property carried within the State, or taken up outside the State and brought within it, or taken up inside and carried without. That company was by its charter authorized "to demand and receive such sum or sums of money for the transportation of persons and property, and for storage of property, as it shall deem reasonable." Charter of the Wisconsin & Superior Railroad Co., sect. 6. Other forms of expression are used in charters granted by Wisconsin to other companies, which by consolidation have become merged in the present corporation; but they are all the same in effect. None go beyond this.

The Constitution of the State in force when each of the several acts of incorporation was passed, provides that all acts for the creation of corporations within the State "may be altered or repealed by the legislature at any time after their passage." Article 11, sect. 1.

It was conceded upon the argument that this reserved power of the constitution gave the legislature "the same power over the business and property of corporations that it has over individuals," or, as it is expressed by one of the counsel, "nothing more could have been intended than to leave the stockholders in corporations in such a position that the legislature could place them on the same footing with natural persons before the law, and disable them from permanently evading the burdens on all others engaged in similar vocations, by appealing to the letter of their charter. Their object was not to open the door to oppression, but to secure simple equality between citizens of the State, whether working singly or in corporate associations." And, in another place, the same learned counsel says: "The privilege, then, of charging whatever rates it may deem proper is a franchise, which may be taken away under the reserved power, but the right to charge a reasonable compensation would remain as a right under the general law governing natural persons, and not as a special franchise or privilege."

Without stopping to inquire whether this is the extent of the operation of this important constitutional reservation, it is sufficient to say that it does, without any doubt, have that effect. In *Munn* v. *Illinois*, *supra*, p. 113, and *Chicago, Burlington, & Quincy Railroad Co.* v. *Iowa*, *supra*, p. 155, we decided that the State may limit the amount of charges by railroad companies for fares and freights, unless restrained by some contract in the charter, even though their income may have been pledged as security for the payment of obligations incurred upon the faith of the charter. So far this case is disposed of by those decisions.

It remains only to consider a few questions raised here which were not involved in the cases that have already been decided.

1. As to the consolidation of the Wisconsin corporations with those of Illinois. For the purpose of promoting this consolidation, the legislature of Wisconsin passed an enabling act, and, in so doing, provided that if such consolidation was perfected, "the consolidated company shall be and remain subject to the laws of the State of Wisconsin and the State of Illinois, respectively, and shall have in all respects the same privileges as though this consolidation had not taken place; provided, that the laws of Illinois shall have no force and effect in the State of Wisconsin." Wisconsin Consolidation Act, March 10, 1855, sect. 8. The second section of the same act also provided that the consolidated company should "have all the rights, privileges, and franchises conferred on the said companies [those in Illinois as well as those in Wisconsin] by the laws of the States of Illinois and Wisconsin, respectively, the same, and not otherwise, as though the said consolidation had not taken place." In this way, Wisconsin in effect said to the Illinois companies, "You may consolidate your interest with those of the named companies in this State, and form one corporation in the two States; but, in so doing, you must, in Wisconsin, be subject to our laws. In Wisconsin, all corporations are liable to have their charters altered or repealed at the will of the legislature. If you are willing to take this risk, we will care for you, within our jurisdiction, precisely as we do for our own corporations."

Upon these terms the consolidation was finally perfected, and the consolidated company now exists under the two jurisdictions, but subject to the same legislative control as to its business in Wisconsin as private persons. The Illinois companies might have stayed out. But they chose to come in, and must now abide the consequences. Thus Wisconsin is permitted to legislate for the consolidated company in that State precisely the same as it would for its own original companies, if no consolidation had taken place. This is the contract by which the Illinois stockholders must abide. Having availed themselves of what they supposed to be the advantages of the consolidation, they cannot repudiate their corresponding obligations.

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There is nothing, therefore, in this objection.

2. The obligations of the consolidated company, under the land grant to the Wisconsin and Superior Railroad Company, to keep that part of its road which formerly belonged to that company open as a public highway for the use of the government of the United States, free from toll or other charges upon the transportation of property or troops of the United States, and to transport the mails at such prices as Congress may by law direct. The United States do not complain. It will be time enough for us to consider this objection when they do.

3. As to the effect of the statute as a regulation of inter-state commerce. The law is confined to State commerce, or such inter-state commerce as directly affects the people of Wisconsin. Until Congress acts in reference to the relations of this company to inter-state commerce, it is certainly within the power of Wisconsin to regulate its fares, &c., so far as they are of domestic concern. With the people of Wisconsin this company has domestic relations. Incidentally, these may reach beyond the State. But certainly, until Congress undertakes to legislate for those who are without the State, Wisconsin may provide for those within, even though it may indirectly affect those without.

4. As to the repeal of this act by that of March 12, 1874. The Supreme Court of Wisconsin has decided that there is no such repeal as is claimed. *The Attorney General* v. *Railroad Companies*, 35 Wis., 427. This is binding on us.

5. As to the claim that the courts must decide what is reasonable, and not the legislature. This is not new to this case. It has been fully considered in *Munn* v. *Illinois*. Where property has been clothed with a public interest, the legisleture may fix a limit to that which shall in law be reasonable for its use. This limit binds the court as well as the people. If it has been improperly fixed, the legislature, not the courts, must be appealed to for the change.

6. The sale of the Chicago, St. Paul and Fond du Lac Railroad Company. The charter of the company whose road was sold does not confer any right which has been impaired by this legislation. That company, like other railroad companies in Wisconsin, was subject to regulation as to its fares, &c. It is, therefore, unnecessary to consider what might under other circumstances have been the effect of such a sale.

This disposes of the case. No other questions need be considered. If the question ever arises whether the company can be compelled to continue its business at the prices fixed, it will be time enough for us to pass upon it when it reaches here in due course of proceeding. It is not here now.

Decrees affirmed.

Mr. Justice Field and Mr. Justice Strong dissented.

[For the above decision, see iv Otto, vol. 94 U. S. S. C., beginning p. 164.]

Chicago, Milwaukee, and St. Paul Railroad Company *v.* Ackley.

A railroad company in Wisconsin cannot recover for the transportation of property more than the maximum fixed by the act of that State of March 11, 1874, by showing that the amount charged was no more than a reasonable compensation for the services rendered.

Error to the Circuit Court of the County of Milwaukee, State of Wisconsin.

Mr. Chief Justice Waite delivered the opinion of the court.

The only question presented by this record is whether a railroad company in Wisconsin can recover for the transportation of property more than the maximum fixed by the act of March 11, 1874, by showing that the amount charged was no more than a reasonable compensation for the services rendered.

What we have already said in *Peik* v. *Chicago & Northwestern Railway Company*, and *Lawrence* v. *Same*, *supra*, p. 164, is applicable to this case. As between the company and a freighter, there is a statutory limitation of the charge for transportation actually performed. If the company should refuse to carry at the prices fixed, and an attempt should be made to forfeit its charter on that account, other questions might arise, which it will be time enough to consider when they are presented. But for goods actually carried, the limit of the recovery is that prescribed by the statute.

Judgment affirmed.

Mr. Justice Field and Mr. Justice Strong dissented.

[For the above decision, see iv Otto, vol. 94 U. S. S. C., p. 179.]

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Winona and St. Peter Railroad Company v. Blake.

1. The Winona and St. Peter Railroad Company, having been incorporated as a common carrier, with all the rights and subject to all the obligations which that term implies, was bound to carry, when called upon for that purpose, and charge only a reasonable compensation therefor.
2. Neither the act of the legislature of Minnesota of Feb. 28, 1866, nor the Constitution of the State, adds to or takes from the grant as contained in the original charter.

Error to the Supreme Court of the State of Minnesota.

Mr. Chief Justice Waite delivered the opinion of the court.

By its charter, the Winona and St. Peter Railroad Company was incorporated as a common carrier, with all the rights and subject to all the obligations that name implies. It was, therefore, bound to carry, when called upon for that purpose, and charge only a reasonable compensation for the carriage. These are incidents of the occupation in which it was authorized to engage. There is nothing in the charter limiting the power of the State to regulate the rates of charge. The provision in the act of Feb. 28, 1866, that the "company shall be bound to carry freight and passengers upon reasonable terms," and that in the Constitution of Minnesota (art. 10, sect. 4), that "all corporations being common carriers, . . . shall be bound to carry the mineral, agricultural, and other productions or manufactures on equal and reasonable terms," add nothing to and take nothing from the grant as contained in the original charter.

This case, therefore, falls directly within our rulings in *Munn* v. *Illinois; Chicago, Burlington, & Quincy Railroad Company* v. *Iowa; Peik* v. *Chicago & Northwestern Railway Company;* and *Chicago, Milwaukee, & St. Paul Railroad Company* v. *Ackley, supra.*

For the reasons stated in the opinions in those cases, the judgment of the Supreme Court of Minnesota is *Affirmed.*

Mr. Justice Field and Mr. Justice Strong dissented.

Note.—In *Southern Minnesota Railroad Company* v. *Coleman*, error to the Circuit Court of the United States for the District of Minnesota, which was argued by *Mr. H. J. Horn* and *Mr. G. E. Cole* for the plaintiff in error, and by *Mr. E. C. Palmer* for the defendant in error, Mr. Chief Justice Waite, in delivering the opinion of the court, remarked: This case in all its essential facts is precisely like that of *Winona and St. Peter Railroad Company* v. *Blake, supra.* The judgment of the Circuit Court is, therefore, affirmed upon the authority of that case, and for the reasons stated in the opinions which have just been read.

Mr. Justice Field and Mr. Justice Strong dissented.

[For the above decision, see iv Otto, vol. 94 U. S. S. C., p. 180.]

Stone v. Wisconsin.

As giving a construction to the State Constitution and statute, this court accepts the decision of the Supreme Court of Wisconsin, that the charter of the Milwaukee and Waukesha Railroad Company, granted by the Territory, is subject to repeal or alteration, inasmuch as it was not accepted nor was the company organized until after the admission of the State into the Union under a constitution which continued that act in force, and provided that all laws for the creation of corporations might be altered or repealed by the legislature at any time after their passage.

Error to the Circuit Court of the County of Dane, State of Wisconsin.

Mr. Chief Justice Waite delivered the opinion of the court.

The only question presented in this case, not decided in *Chicago, Milwaukee and St. Paul Railroad Co.* v. *Ackley, supra*, p. 179, is as to the effect upon the rights of these parties of the charter of the Milwaukee and Waukesha Railroad Company, passed by the territorial legislature of Wisconsin, March 11, 1847. This provides (sect. 15) that "on the completion of said railroad, or any portion of the track, not less than ten miles, it shall and may be lawful for the company to demand and receive such sum or sums of money for passage and freight of persons and property as they shall from time to time think reasonable." It is claimed that this gives the company the charter or contract right to fix its own rates of fare and freight, subject only to a judicial determination as to whether they are reasonable. Without admitting that such would be the effect of this provision, we shall dispose of the case upon another ground.

The first section of the act appoints commissioners to receive subscriptions to the capital stock. The second section provides:—

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"That the capital stock of said company shall be $10[illegible],000, in shares of $100 each; and as soon as one thousand shares of stock shall be subscribed, and five dollars on each share actually paid in, and a statement shall be deposited with the treasurer of the county of Milwaukee, authenticated by the oath of the secretary and two or more of said commissioners, that such subscriptions and payments have been in good faith made, the subscribers of such stock, with such other persons as shall associate with them for that purpose, their successors and assigns, shall be, and they are hereby, declared and created a body corporate and politic, by the name and style of 'Milwaukee and Waukesha Railroad Company,' with perpetual succession, and by that name shall have all the privileges, franchises and immunities incident to a corporation."

The commissioners named in the first section met and organized Nov. 23, 1847. Books of subscription were opened, and one of the commissioners was authorized to procure an amendment of the charter. Upon application made under this authority an amendment, not at all important to the present inquiry, was passed by the territorial legislature March 11, 1848. The requisite amount of stock was subscribed on or before April 5, 1849. It does not appear that any was subscribed before; but on that day the necessary certificate under sect. 2 was filed with the treasurer of Milwaukee county.

Wisconsin was admitted into the Union as a State May 29, 1848, 9 Stat., 233, under a constitution ratified by the people March 2, 1848, which provided, art. 11, sect. 1, that all laws for the creation of corporations "may be altered or repealed by the legislature at any time after their passage."

Upon this state of facts the Supreme Court of Wisconsin decided, in the case of *The Attorney General* v. *Railroad Companies*, 35 Wis., 599, "that the charter was accepted and the corporation organized many months after the adoption of the Constitution and the admission of the State into the Union by Congress." Previous to that time it "remained a naked, unaccepted proposition," p. 601. For this reason it was held that "its acceptance after the organization of the State, so far as it is a contract, makes it manifestly a contract with the State," p. 605. The ground on which the decision was placed is that, as the act of incorporation had not been accepted when the territory ceased to exist, there was no contract between the corporation and the territory; but the State Consitution having continued the act in force, it became thereafter a State statute for the incorporation of the company, and, as such, subject to the reserved power of alteration and repeal. This construction of the statute and Constitution is binding upon us as a question of State statutory and constitutional law.

This being so, we are not called upon to consider any of the other points which appear in the case in opposition to the effect claimed for the territorial act by the plaintiff in error.

Judgment affirmed.

MR. JUSTICE FIELD, with whom concurred MR. JUSTICE STRONG, dissenting.

I dissent from the judgments of the court in the several railroad cases arising in the States of Illinois, Wisconsin, Iowa, and Minnesota, commonly known as the "Granger Cases," and from the reasons on which the judgments are founded. These cases involved a consideration of the charters of the different companies, and of the extent of the power of the legislature over them, as well in the absence of any reservation of a right to alter or repeal them, as when such reservation was embodied in them, or in the constitutions under which they were granted. On the one hand, it was contended that the legislature of each State possessed the power, irrespective of any reservation, to regulate at its discretion the compensation which the companies chartered by it might charge for the carriage of persons and merchandise, without reference to the expenses of the carriage, or the obligations incurred in the construction of the roads. Unlimited power over every railroad corporation in respect to the business it should carry on, and the compensation it should receive, was asserted, except where these were specifically designated and permanently fixed in the charter.

On the other hand, it was contended that the charters of the companies constituted contracts between the States creating them and the corporators, within the provision of the Federal Constitution prohibiting legislation impairing the obligation of contracts; and that they could not, therefore, be changed in any material particular, unless the power to make the change was reserved in the charters, or in some constitutional provision of the States; that the right of the companies to operate their respective roads and charge reasonable compensation for transportation of persons and merchandise was the essential franchise granted, and that what was reasonable compensation in any case, depending, as it must, upon a variety of considerations, upon which the parties had a right to be heard, was a judicial question, and not a matter for the legislative determination.

It was also contended that the clause in the Constitution of some of the States, reserving a power to their legislatures to alter acts of incorporation, did not authorize an entire change in the character of a corporation, or its destruction; and that a sound

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interpretation of the clause would prevent such a regulation of fares as would take from a company the power to meet its just obligations, by which the means were obtained to construct and equip its road.

The questions thus presented are of the gravest importance, and their solution must materially affect the value of property invested in railroads to the amount of many hundreds of millions, and will have a great influence in encouraging or repelling future investments in such property. They were ably and elaborately argued by eminent counsel, and nothing was omitted which could have informed or enlightened the court. The opportunity was presented for the court to define the limits of the power of the State over its corporations after they have expended money and incurred obligations upon the faith of the grants to them, and the rights of the corporators, so that, on the one hand, the property interests of the stockholder would be protected from practical confiscation, and, on the other hand, the people would be protected from arbitrary and extortionate charges. This has not been done; but the doctrine advanced in *Munn* v. *Illinois*, *supra*, p. 113, has been applied to all railroad companies and their business, and they are thus practically placed at the mercy of the legislature of every State.

In that case, the court has declared as its solemn judgment that property "becomes clothed with a public interest when it is used in such a manner as to be of public consequence and affect the community at large," and thus loses enough of its private character to make its use subject to regulation, not only in the manner of the use, but as to the compensation which the owner may receive for it. "When, therefore," says the court, "one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to the control." There is no business or enterprise involving expenditures to any extent which is not of public consequence, and which does not affect the community at large. There is no industry or employment, no trade or manufacture, and no avocation which does not in a greater or less extent affect the community at large, and in which the public has not an interest in the sense used by the court.

There is no doubt of the power of the legislature to prescribe in the charter of any corporation the compensation it may receive for services rendered, or to reserve the power to regulate such compensation subsequently. The power to prescribe the conditions of use and enjoyment necessarily accompanies the power to grant. But the charter of a corporation being a contract, a sufficient consideration for the privileges and franchises conferred being found in the duties and liabilities assumed by the corporators, the subsequent power of the legislature is restrained by its terms. This has been so often judicially declared, that it has been supposed to be no longer open to discussion. The first question, therefore, for consideration in all cases where legislation affects the constitution of a corporation, or its beneficial operation, is, what is the true construction of its charter, and, consequently, what privileges does it confer and what restraint does it impose upon legislative interference? The rights and privileges implied in the contract are equally as inviolable as those expressed. This question is not met by the court in its opinion, the several cases being disposed of by the novel doctrine announced in *Munn* v. *Illinois*, that the legislature has the right to regulate the compensation for the use of all property, and for services in connection with it, the use of which affects the "community at large;" and the further doctrine, equally novel, that although the charter of a company confers the power to make reasonable charges, the whole matter is reserved to be regulated by the State, in its discretion.

If it be admitted that the reserved power to alter all laws creating corporations authorizes the legislature to regulate the rates of charges of a railroad company for the transportation of persons and property, it should not, in common honesty, be so used as to destroy or essentially impair the value of mortgages and other obligations executed under express authority of the State. The reserved power has not generally been supposed to authorize the legislature to revoke the contracts of the corporation with third parties, or to impair any vested rights acquired under them. But no considerations of this kind are of any weight under the decision in that case.

So long as that decision remains, it will be a waste of words to discuss the questions argued by counsel in these cases. That decision, in its wide sweep, practically destroys all the guaranties of the constitution and of the common law invoked by counsel for the protection of the rights of the railroad companies. Of what avail is the constitutional

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provision that no State shall deprive any person of his property except by due process of law, if the State can, by fixing the compensation which he may receive for its use, take from him all that is valuable in the property? To what purpose can the constitutional prohibition upon the State against impairing the obligation of contracts be invoked, if the State can, in the face of a charter authorizing a company to charge reasonable rates, prescribe what rates shall be deemed reasonable for services rendered? That decision will justify the legislature in fixing the price of all articles and the compensation for all services. It sanctions intermeddling with all business and pursuits and property in the community, leaving the use and enjoyment of property and the compensation for its use to the discretion of the legislature. Having already expressed my objections to that decision in a dissenting opinion, I need not repeat them here.

[For the above decision, and dissenting opinion, see 1v Otto, vol. 94 U. S. S. C., beginning p. 181.]

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INDEX.

Digitized by Google

Digitized by Google

INDEX.

(See Analytical Index.)

PAGE.

Introductory Note..... 4
Analysis..... 5
Constitutional Provisions..... 7
Chapter I—Corporations..... 12
Chapter II—Eminent Domain..... 19
Chapter III—Railroads..... 23
Chapter IV—Warehouses..... 77
Chapter V—Railroad and Warehouse Commissioners..... 89
Chapter VI—Revenue..... 95
Chapter VII—Criminal Code..... 102
Chapter VIII—Miscellaneous Provisions..... 119
Constitutional provisions, adopted in convention May 13, 1870; ratified by the people July 2, 1870. In force August 8, 1870..... 7
An act to provide for changing the names, for changing the place of business, for increasing or decreasing the capital stock, for increasing or decreasing the number of directors, and for the consolidation of incorporated companies. In force March 26, 1872..... 12
An act in relation to the consolidation of incorporated companies. In force May 9, 1867.. 14
An act in regard to evidence and depositions in civil cases. In force July 1, 1872..... 14
An act to revise the law in relation to rate of interest. In force July 1. 1874..... 15
An act in regard to judgments and decrees, and the manner of enforcing the same by execution, and to provide for the redemption of real estate sale sold under execution or decree. In force July1, 1872..... 15
An act to amend section 8 of an act entitled "An act to revise the law in relation to the rate of interest," approved March 25, A. D. 1874..... 16
An act authorizing the change of directors of incorporated companies, in certain cases. In force May 22, 1877..... 16
An act to revise the law in relation to quo warranto. In force July 1, 1874..... 17
An act to regulate the practice in Courts of Chancery. In force July 1, 1872..... 18
An act in regard to the assessment, levy and collection of taxes of incorporated cities in this State, for years prior to the year 1877. In force July 1, 1877..... 18
An act to provide for the exercise of the right of eminent domain. In force July 1, 1872 19
An act for the further protection of State Institutions. In force March 9, 1867..... 22
An act to provide for the incorporation of associations that may be organized for the purpose of constructing railways, maintaining and operating the same; for prescribing and defining the duties, and limiting the powers of such corporations, when so organized. In force March 1, 1872..... 24
An act to enable railroad companies to borrow money and to mortgage their property and franchises therefor. In force July 1, 1873 33
An act to enable railroad companies to enter into operative contracts, and to borrow money. Approved February 12, 1865..... 34
An act to facilitate travel and transportation. In force February 25, 1867... 34
An act relating to lessees in this State of railroads in adjoining States. In force July 1, 1875... 35
An act authorizing the formation of union depots and stations for railroads in this State. In force July 1, 1875. 35
An act to facilitate the carrage and transfer of passengers and property by railroad companies. In force July 1, 1877 37

Digitized by Google

PAGE.

An act compelling railroad companies in this State to build and maintain depots for the comfort of passengers, and for the protection of shippers of freight, at towns and villages on the line of their roads. In force July 1, 1877.. 38

An act in relation to fencing and operating railroads. In force July 1, 1874..... 38

An act relating to fires caused by locomotives. In force March 29, 1869..... 47

An act to prevent frauds upon travelers and owner or owners of any railroad, steamboat or other conveyance for the transportation of passengers. Ir force July 1, 1875..... 47

An act for the protection of passengers on railroads. In force July 1, 1877..... 48

An act regulating the receiving, transportation and delivery of grain by railroad corporations, and defining the duties of such corporations with respect thereto. In force July 1, 1871..... 49

An act to prevent extortion and unjust discrimination in the rates charged for the transportation of passengers and freights on railroads in this State, and to punish the same, and to prescribe a mode of procedure and rules of evidence in relation thereto, and to repeal an act entited "An act to prevent unjust discrimination and extortion in the rates to be charged by the different railroads in this state for the transportation of freights on said railroads." In force July 1, 1873..... 52

An act to protect contractors, sub-contractors, and laborers in their claims against railroad companies, or corporations, contractors or sub-contractors. In force July 1, 1872..... 56

An act to fund and provide for paying the railroad debts of counties, townships, cities and towns. In force April 16, 1869..... 58

An act to enable counties, cities, townships, school districts, and other municipal corporations to take up and cancel outstanding bonds and other evidences of indebtedness and fund the same. In force March 26, 1872..... 63

An act to require state and county treasurers to deliver up bonds and coupons issued in aid of railroad or other corporations, which have been paid, to any person or persons who may be authorized by any county, town or city to receive the same. In force July 1, 1872. 64

An act to provide for the payment of the registered indebtedness of counties, townships, cities and towns. In force July 1, 1874..... 65

An act to amend an act entitled "An act to limit and determine the time for which counties, cities, townships, towns and precincts in this state shall be liable and holden to issue aid for the building of any railroad in pursuance of any vote taken in conformity to the laws of this state." In force July 1, 1877..... 66

An act to amend an act entitled "An act relating to county and city debts, and to provide for the payment thereof by taxation in such counties and cities," approved February 13, 1865, and to amend the title thereof. Approved and in force April 27, 1877..... 66

An act to provide for the incorporation of cities and villages. In force July 1, 1872..... 71

An act in relation to the collection of taxes and special assessments. In force May 2, 1873..... 72

An act to compel the trustees of the lands granted to the Illinois Central Railroad Company to execute their trust. In force July 1, 1873 73

An act in relation to the mode of proving title to the lands granted to the Illinois Central Railroad Company. In force July 1, 1872..... 75

Act of Congress in relation to the Illinois Central Railroad. September 20, 1850..... 75

An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to article 13 of the constitution of this state. In force July 1, 1871..... 77

An act to amend an act entitled "An act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to article thirteen of the constitution of the state, approved April 25, 1871, in force July 1, 1871, and to establish a committee of appeal and prescribe their duties. In force July 1, 1873..... 87

An act to authorize incorporated cities, towns or villages in this state situated upon the banks of navigable rivers, to lease parts of their public landings or levees. In force July 1, 1874..... 88

An act to establish a board of railroad and warehouse commissioners, and prescribe their powers and duties. In force July 1, 1871..... 89

An act for the assessment of property and for the levy and collection of taxes. In force July 1, 1872..... 95

An act to provide for the assessment and taxation of bridges across navigable waters on the borders of this state. In force May 1, 1873..... 107

An act in regard to the assessment of property and the levy and collection of taxes by incorporated cities in this state. In force July 1, 1873..... 108

An act to amend section 36 of an act entitled "An act to revise the law in relation to criminal jurisprudence." In force July 1, 1877..... 108

An act to amend an act entitled "An act to revise the law in relation to criminal jurisprudence." In force July 1, 1877..... 109

An act to revise the law in relation to criminal jurisprudence. In force July 1, 1874..... 109

*An act to amend an act entitled "An act to prevent the importation of Texas or Cherokee cattle into the State or Illinois." In force April 16, 1869..... 116

*An act to prohibit any person from obstructing the regular operation and conduct of the business of railroad companies or other corporations, firms or individuals. In force July 1, 1877 118

*An act to prevent frauds in the coloring of grain. In force July 1, 1877..... 119

*Arranged in Chapter VII, Criminal Code.

Digitized by Google

PAGE.

An act to provide for the election and qualification of justices of the peace and constables, and to provide for the jurisdiction and practice of justices of the peace, in civil cases and to fix the duties of constables, and to repeal certain acts therein named. In force July 1, 1872 119

An act to amend sections two and four of an act entitled "An act in regard to practice in courts of record." In force July 1, 1877 120

An act in regard to gateways, roads and bridges in counties not under township organization. In force April 18, 1873 121

An act giving the assent of the State of Illinois to the construction of bridges across navigable rivers in this State, and upon the boundaries thereof. In force July 1, 1872 121

An act to provide for the sale of unredeemed property by common carriers, warehousemen and inn-keepers. In force July 1, 1874 121

An act to empower township trustees to sell and convey right of way and depot grounds for the use of railroads crossing school lands. In force July 1, 1875 122

An act to revise the law in relation to plats. In force July 1, 1874 122

An act to fix the liability of common carriers receiving property for transportation. In force July 1, 1874 123

An act to revise the law in relation to State contracts. In force July 1, 1874 123

An act to provide for the ordinary and contingent expenses of the State government until the expiration of the first fiscal quarter after the adjournment of the next regular session of the general assembly, and for the purpose of suspending the salaries of the state house commissioners from July 1st, A. D. 1877, until provision is made for funds to complete the state house building. In force July 1, 1877 124

APPENDIX.

Rules established by the board of railroad and warehouse commissioners for the government of the inspection department 3

Rules establishing a proper number and standard of grades for the inspection of grain 7

UNITED STATES SUPREME COURT DECISIONS:—

Ira Y. Munn vs. People State of Illinois 10

Chicago, Burlington and Quincy Railroad Company vs. Iowa 25

Peik vs. Chicago and Northwestern Railway Company 27

Chicago, Milwaukee and St. Paul Railroad Company vs. Ackley 29

Winona and St. Peter's Railroad Company vs. Blake 30

Stone vs. Wisconsin 30

Digitized by Google

ANALYTICAL INDEX.

A

ANIMALS.
Cruelty to, 110, § 7.
ANALYSIS, p 5.
AGENTS.
Railroad to make complaint, 42, § 65.
To receive and deliver freight, 43, § 70.
Must have certificates, 47, § 88.
Cannot act without certificate, 48, § 89.
Penalty for violating preceding section, 48, § 90.
Must exhibit certificate, 48, § 91.
APPEALS.
Committee of, on grain, 87, § 29.
Taking of, notice given, 87, § 30.
Fees in, 87, § 31.
APPROPRIATIONS.
For Railroad and Warehouse Commissioners, 124, § 19.
What paid out of Illinois Central fund, 124, § 19.
APPENDIX.
CHIEF INSPECTOR AND REGISTRAR.
Rules for government of, p 3.
GRAIN.
Rules for grading, p 7.
UNITED STATES SUPREME COURT DECISIONS,
Munn and Scott vs. People of the State of Illinois, p 10.
C., B. and Q. R. R. Co. vs. Iowa, p 25.
Peik vs. C. and N. W. R'y Co., p 27.
C., M. and St. P. R. R. Co, vs. Ackley, p 29.
W. and St. P. R. R. Co. vs. Blake, p 30.
Stone vs. Wisconsin, p 30.

B

BADGE.
Railroad employes to wear, 45, § 80.
BAGGAGE.
Checks for, 45, § 77.
Smashing of, 45, § 78.
Injury to. 114, § 24.
BRIDGES.
Railroads may connect at, 34, § 36.
Capital stock to be listed, 99, § 14.
Border, how assessed, 107, § 46.
Sale of, for taxes, 107, § 47.
Across navigable streams, 121, § 8,
BOOKS.
Obscene, circulation of, 115, § 27.
Obscene, depositing with common carrier, 116, § 28.
BURGLARY.
Punishment for, 108, § 1.

C

CATTLE.
Texas, or Cherokee, when not to be brought in State, 116, § 31.
Ownership of, when unlawful, 116, § 32.
Penalties for possession of, 117, § 33.
Joint and several liability for possession and transportation of, 117, § 34.
Loss or injury from, when not a defense, 117. § 35.
Meaning of—evidence, 118, § 36.
CHARTERS.
Special limit for, 8, § 6.
CONSOLIDATIONS.
When prohibited, 9 § 10.
CORPORATIONS.
Meetings of stockholders, 12, § 1.
Changes of organization to be filed, 14, § 5.
Not stock companies, application of act to, 14, § 6.
Changes of name, etc., not to affect suits, 14, § 7.
Notice of desire to consolidate, 14, § 8.
Consolidated, liable for debt, 14, § 9.
Papers, records, etc., how proved, 14, § 10.
Form of certificate of papers, etc., 14, § 11.
Not to plead ursury, 15, § 12.
Stock shares subject to execution, 15, § 13.
Copy of to be kept with officers of, 15, § 14.
And citizens, rate of interest between, 16, § 19.
May change from even to odd number of directors, 16. § 20.
Special meetings of, how called, 16, § 21.
Manner of voting by, 16, § 22.
Certificate of vote to be filed, 17. § 23.
Quo warranto, when may issue against, 17, § 24.
Judgment of ouster against, 18, § 25.
Discovery by, 18, § 26.
Taxes, voluntary payment of, 18, § 27.
Powers of, 24, § 4; 29, § 20.
Term of existence, 25, § 5.
By-laws of, 25, § 6.
Public office of in State, 25, § 7.
Classification of directors, 25, § 8.
Meetings, how and when called, 26, § 9.
To make annual and special statements, 26, § 10.
Election of directors by, 26, § 11.
President and other officers of, 27. § 12.
Subscriptions to the capital stock of, 27, § 13.
Stock transfers of, 27, § 14.
Not to purchase their own stock, 27, § 14.
Increase of capital stock, 27, § 15.
Liabilities of, on stock, 28, § 16.
Liabilities of stockholders, 28, § 17.
Real estate, lease acquired, 28, § 18.

Digitized by Google

CORPORATIONS—Continued.
Materials for construction, how acquired, 28, § 19.
Personal property of, liable to execution, 30, § 21.
Stock and bonds of, for what issued, 31, § 22.
Consolidation of, 31, § 23
To report to auditor, 31, § 24.
Discriminations and extortions by, 31, § 25.
May cumulate votes, 31, § 26.
Rates of when aid induced, 31, § 27.
When must commence construction of road, 32, § 28.
Repealing clause concerning, 32, § 29.
May borrow money, 33, § 30.
How may create debts, 33, § 31.
Notice of meeting, 33, § 32.
Record mortgage, 34, § 33.
Railroad, may contract with each other, 34, § 34.
Railroad, may connect with each other, 34, § 35.
Railroad, may purchase from lessors, 35, § 37.
Union Depot, 35, § 38 to 43.
Railroad, may own water craft, 37, § 44.
Railroad, must fence, 38, § 47.
Railroads must keep right of way clear of combustibles, persons and animals, 39, § 48 and 49.
Railroad, neglect to fence, 40, § 50.
Defined, 47, § 86, and 56, § 112.
Embezzlement by officers of, 110, § 8.
Counterfeiting seals of, 112, § 13.
Assuming name of, 115, § 26.
Service on, 120, § 2.
Service on and return, 120, § 5.
Bridges of, across navigable streams, 121, § 8.
COMMISSIONERS, Railroad and Warehouse.
Duties of, 55, § 109.
To schedule rates, 55, § 110.
To fix compensation of Chief Inspector, 81, § 13.
To appoint Registrar, 81, § 13.
To establish grades of grain, 87, § 28.
To appoint committee of appeals, 87, § 29.
To fix inspection fees, 88, § 32.
Appointment of—term of office, 89, § 1.
Qualifications of, 89, § 2.
Oath and bond of, 89, § 3.
Compensation and expenses of, 90, § 4.
May appoint Secretary, 90, § 4.
Right to pass on trains, 90, § 5.
Railroads must report to, 90, § 6.
What must railroads report, 90, § 6
May ask additional questions, 92, § 7.
May require statement from warehousemen, 92, § 9,
Must report to governor, 92, § 10.
To examine railroads, 92, § 11.
May cancel warehouse license, 93, § 12,
May examine books of railroads and warehouses, 93, § 13.
May examine witnesses, 93, § 14.
Penalty against witnesses refusing to answer, 94, § 15.
Penalty against railroads refusing to report to, 94, § 16.
Suits of—how prosecuted, 94, § 17 and 18.
CROSSINGS, Railroad, sign boards at, 40, § 52.
Bell and whistle at, 40, § 53.
Approaches at, 41, § 56.
Neglect to make, 41, § 57.
Authorities may construct when Company neglect, 41, § 58.
Company to pay, 41, § 59.
Draw bridge, 41, § 60.
Penalty for violating preceding clause, 41, § 61.
Not to obstruct, 42, § 62.
CONDUCTORS—
Have police powers, 48, § 94.
May eject passengers, 49, § 95.
May arrest passengers, 49, § 96.
Must wear badge, 45, § 80.

CONTRACTORS.
Lien against railroads, 56, § 113.
Sub, lien of, 57, § 114.
Notice of close of lien, 57, § 115.
Manner of notice, 57, § 116.
Suit and transcript, 57, § 117.
Attorneys fees taxed as costs, 58, § 118.
Failure of original, 58, § 119.
Limitation of time, 58, § 120.
COMMON CARRIER.
Negligence of, 110, § 6.
Receiving obscene books, 116, § 28.
Common law liability, 123, § 14.
COUNTY CLERKS.
To keep book for taxable railroad property, 102, § 28.
To return abstract of assessed property to Auditor, 105, § 38.
To extend taxes, 105, § 40.
Extend tax against railroad property, 106, § 42.
Rates of addition or deduction extended, 106, § 43.
COUNTIES.
Bonds of, in aid of railroads, p 58 to 71.
CITIES.
Municipal bonds in aid of railroad, p 58 to 71.
To regulate speed of trains through, 44, § 72.
Railroads to provide flagmen, 46, § 84.
Power of councils with reference to railroads, 71, § 151.
May lease landings for warehouses, 88, § 33.
Assessment of taxes in, 108, § 48.

D

DEPOTS,
Union, 35, § 38 to § 43.
Built and maintained, 38, § 45.
Penalty for failure to build, 38, § 46.
Time of stop at stations, 44, § 73.
DISCRIMINATION.
Unjust prevented, 10, § 14.
Forbiden by Union Depot Co's., 37, § 43.
By railroads prohibited, 52, § 104.
Evidence of, 52, § 105.
Penalties for, 54, § 106.
Fine for, how recovered, 54, § 107.
Damage recovered for, 55, § 108.
Evidence—fines—practice, 56, § 111.
Corporation defined, 56, § 112.
Warehousemen not to make, 82, § 14.
DAMAGE.
Private property—compensation, 7, § 1.
DIRECTORS.
Majority must be in the State, 9, § 10.
Not less than five nor more than eleven, 12, § 1.
Change from even to odd number, 16, § 20.
Powers of, 25, § 8.
How classified, 25, § 8.
How may call meetings, 26, § 9.
To make annual statements, 26, § 10.
Election of, 26, § 11.
To elect officers, 27, § 12,
Report to auditor, 31, § 24.
Cumulative voting for, 31, § 26.
Debts, how created, 33, § 31.
Notice of meetings, 33, § 32.
Union depot, 37, § 42.

E

EXECUTION.
Rolling stock liable to, 9, § 9; 30, § 21.
Stock shares subject to, 15, § 13.
Copy of, to be left, 15, § 14.
Sale of stock shares, 15, § 15.
Number of shares certified on executive sale, 15, § 16.

Digitized by Google

EXECUTION—Continued.
Purchaser of stock under, entitled to certificate, 15, § 17.
When entitled to dividends, 15, § 18.
EMINENT DOMAIN. P. 19, Chap. 2.
To be held inviolate, 9, § 13.
Compensation for private property taken, 19, § 1.
Manner of proceeding, 19, § 2.
Petition, when may be presented, 20, § 3.
Service of summons, 20, § 4.
Causes heard in vacation, 20, § 5.
Clerk of court, duty of—jury, 20, § 6.
Impanneling jury, 21, § 7.
Oath of jury, 21, § 8.
View of premises—verdict, 21, § 9.
Judgment—payment, 21, § 10.
Appeal, 22, § 12.
Cross petition, 21, § 11.
Use of premises—bond, 22, § 13.
Payment may be made to county treasurer, 22, § 14.
Judgment entered, 22, § 15.
Repealing clause, 22, § 16.
Lands of State institutions, how taken, 22, § 17.
Title to real estate, 28, § 18.
Material for construction, 28, § 19.
ENGINEER—
Not to abandon engine, 118, § 37.
EXTORTION—
By railroads prohibited, 52, § 103.
Penalty for, 54, § 106.
Fine for, how recovered, 54, § 107.
Damage recovered for, 55, § 108.
Evidence—fines—practice, 66, § 111.
Corporation defined, 56, § 112.
EMBEZZLEMENT.
Indictment for, 111, § 10.
Incorporation taken for granted, 112, § 12.

F

FENCING.
Railroads must fence within six months, 38, § 47.
Neglect to fence, 39, § 50.
Adjoining owner may build, 39, § 51.
FUNDS.
Withholding of, by custodian—penalty, 114, § 25.

G

GRAIN.
To be weighed and receipted by railroad, 10, § 18.
Delivered to consignees by railroads, 10, § 19.
Inspection of, regulated by law, 11, § 21.
Railroads to receive without distinction, 49, § 87.
Railroads must deliver, 50, § 99.
Consignment of, may be changed, 51, § 100.
Receipts of, on track, 51, § 101.
Receipt of, at crossings, 52, § 102.
Not to be mixed, 78, § 6.
Shall be receipted for by warehousemen, 79, § 7.
Receipts to be canceled, 79, § 8.
Receipts for, how canceled and issued, 79, § 9.
Weekly statement of, inspected, 80, § 12.
Supervision of, by Commissioners, 81, § 13.
Maximum charge for storage and handling, 82, § 14,
Warehousemen exercise vigilance over, 83, § 15.
Out of condition, how treated, 83, § 15.
Of different grades not to be mixed, 84, § 16.
Scales, who may examine, 84, § 17.
Inspected before received, 85, § 18.
Owner dissatisfied, what to do, 85, § 20.
GRAIN—Continued.
Cars to be placed convenient for unloading, 85, § 20.
Commissioners to establish grade of, 87, § 28.
Committee of appeals on, 87, § 29.
Notice of appeal, 87, § 30.
Inspection fees, lien thereon, 88, § 32.
Gambling in, 113, § 18.
Coloring of, 119, § 41.
Colored, not to be on sale, 119, § 42.
Coloring, penalty for, 119, § 43.
Coloring, how fines collected, 119, § 44.

I

INTRODUCTORY.—Note 4.
ILLINOIS CENTRAL RAILROAD.
Contracts of to remain intact, 11, § 22.
7 per cent. gross income, 72, § 152.
Lands taxable, 72, § 153.
Lands, trustees of, 73, § 154.
Lands to be annually offered for sale, 73, § 155.
Lands, notice of sale, 74, § 156.
Lands, how offered for sale, 74, § 157.
Lands, conveyance of—taxes, 74, § 158.
Lands, sale compelled, 74, § 159.
Lands, tract list evidence, 75, § 160.
Trustees, evidence of, 75, § 161.
Right of way, 75, § 162.
Land grant, 75, § 163.
Lands reserved, 76, § 164.
Lands, how disposed of, 76, § 165.
Road to be completed in ten years, 76, § 166.
Rates of transportation to U. S., 77, § 167.
Statute applies to Alabama and Mississippi, 77, § 168.
Lands when taxabl , 104, § 35.
Abstracts of land sold, 107, § 45.
INSPECTOR, CHIEF.
How appointed, 81, § 13.
Bond of, duties, etc., 81, § 13.
INSPECTORS.
To inspect and grade, 85, § 18.
Assuming to act, impostor, 85 § 19.
Not to neglect duty, etc., 85, § 19.
INSPECTION.
When unsatisfactory what to do, 85, § 20.
Appeal from, 87, § 30.
Fees on appeal, 87, § 31.

J

JURY.
Determine compensation, 7, § 1.
JURISDICTION.
Of justices of the peace, 119, § 1.
Suits where brought, 120, § 4.

L

LIENS.
Contractors for ties, 56, § 113.
Sub-contractors and laborers, 57, § 114.
Notice of claim, 57, § 115.
Manner of notice, 57, § 116.
Suit and transcript, 57, § 117.
Attorney's fees assessed as cost, 58, § 118.
When original contractor fails, 58, § 119.
Limitation of, 58. § 120.
LEGISLATION.
Special prohibited, 7, § 3.

M

MUNICIPAL BONDS.
State taxes on valuation above 1868 refunded, 58, § 121.

Digitized by Google

MUNICIPAL BONDS—Continued.
Registration of, 59, § 122.
Municipal corporations voting, must certify property value, 60, § 123.
Auditor to estimate per cent. of tax for payment of interest on, 60, § 124.
State not to be held for, 60, § 125.
Funds how disbursed by state, 61, § 126.
Not to be issued until road completed, 61, 127.
Represented in R R. directory, 62, § 128.
Entry of payment of, 63, § 130.
Paid in ten years, 63, § 131.
Fees and bond of collector, 63, § 132.
New bonds for old, 63, § 133.
Paid, to be delivered up, 64, § 134.
Fees and salary of collectors, 64, § 135.
Surplus funds apply to purchase of, 65, § 136.
Purchase of with surplus, 65, § 137.
Cancellation of, 65, § 138.
Surplus funds how invested, 65, § 139.
Time limited for issuing, 66, § 140.
New bonds issued for old, 67. § 142.
Old cancelled—new registered, 67, § 143.
Taxable property assessed to pay, certified, 68, § 144.
Auditor certify rate of tax to meet, 68, § 145.
State custodian of tax to meet payment of, 69, § 146.
Funds for, how disbursed by state, 70, § 147.
When registered and not paid, 70. § 148.
Entry of payment of, 70, § 149.
Fees on, and collector's bond, 71, § 150.
MISCHIEF.
Malicious to railroads, 109, § 2.

P

PASSENGERS.
Put off train for misconduct, 45, § 79.
Car furnished with ax, saw, etc.. 46, § 82.
May be ejected, 49, § 95.
May be arrested. 49, § 96.
PROPERTY.
Unclaimed, sale of, 121, § 9.
Perishable, sale of, 122, § 10.
Application of preceding sections, 122, § 11.
PUBLIC DOCUMENTS.
Number of Railroad and Warehouse Reports to be printed, 123, § 15.
Size of Railroad and Warehouse Report, 123, § 16.
How report bound, 123, §§ 17, 18.

Q

QUINCY.
Saving clause for City of, 11, § 25.

R

REGISTRAR.
Daily statement of grain to, 80, § 12.
Appointed by commissioners, 81, § 13.
To mark receipts "registered," 88, § 32.
REVENUE—Chapter 6, page 95.
How raised, 8, § 1.
What property taxed, 95, § 1.
Personal property, how valued, 95, § 2.
Real property, how valued, 96, § 3.
Personal property, when listed, 96, § 4.
Who shall and what listed, 96, § 5.
When listed and assessed, 97, § 6.
Personal property of corporations, 97, § 7.
Property to be scheduled, 97, § 8.
Form of schedule, 97, § 9.
When assessor may examine, under oath, 98, § 10.
Listing credits, 98, § 11.
REVENUE—Continued.
What debts not deducted, 98, § 12.
Oath, perjury, fines, 98, § 13.
Capital stock of corporations, 99, § 14.
Schedule statement of capital stock, 99, § 15.
Franchise to be listed, 99, § 16.
Listing property of railroads, 100, § 17.
Schedule railroad property, time and form of, 100, § 18.
Right of way taxable as real estate, 100, § 19.
How railroad track listed, 100, § 20.
Rolling stock, 101, § 21.
How rolling stock listed, 101, § 22.
Tools and materials, when listed, 101, § 23.
How other property assessed, 101, § 24.
Railroad returns to auditor, 101, § 25.
Neglect to return to auditor, 102, § 26.
Schedules to be laid before state board of equalization, 102, § 27.
Record book for railroad property, 102, § 28.
Land plats, how described, 103, § 29.
Returns of telegraph companies, 103, § 30.
Telegraph companies taxed, how assessed and collected, 103, § 31.
Telegraph companies, personal property of, 103, § 32
False schedule, penalty, 103, § 33.
Perjury, 104, § 34.
When assessors to fix value, 104. § 36.
County equalization board, duty of, 104, § 37.
County clerks to report to auditor, 105, § 38.
State board of equalization to classify property, 105, § 39.
State board assess capital stock, how, 105, § 40.
State board to assess railroad, property, how, 106, § 41.
Rates extended by clerks, 106, § 43.
Distress for taxes, 106, § 44.
Government lands, 104, § 35.
Illinois Central railroad abstracts, 107, § 45.
Border bridges, how assessed, 107, § 46.
Sale of bridges for taxes, 107, § 47.
Assessment of property in cities, 108, § 48.
RECORDS.
Alteration of, 111, § 11.
RAILROAD COMPANIES.
To weigh, measure and receipt for grain, 10, § 18.
Deliver grain to consignee, 10, § 19.
Must permit track connections, 10, § 19.
Notice to be given of desire to consolidate, 14, § 8.
Proceedings to acquire private property, 19, § 2.
Number of persons for incorporation, 24, § 1.
Incorporators sign and record articles, 24, § 2.
Provisions of articles, 24, § 3.
Powers of organized corporations, 24, § 4.
Term of existence, 25, § 5.
By-laws 25, § 6.
Public office in state, 25, § 7.
Classification of directors, 25, § 8.
Meetings, how and when called, 26, § 9.
RAILROADS—Chapter 3, page 23.
Maintain public office in state, 8, § 8.
Public highways, 9, § 11.
Rolling stock personal property, 9, § 9.
Listing property of for taxation, 100, § 17.
Right of way taxable, 100, § 19.
Track, how listed for taxation, 100, § 20.
Rolling stock taxable, 101, § 21.
Rolling stock, how listed for taxation, 101, § 22.
Return to auditor listed taxable property, 101, § 25.
Owning telegraph line shall list for taxation, 103, § 30.
Tickets, neglect to cancel, etc., 111, § 9.
Annual and special statements by directors, 26, § 10.
Election of directors, 26, § 11.
President and other officers, 27, § 12.
Subscription to capital stock, 27, § 13.
Stock, transfer of, 27, § 14.
Increase of capital stock, 27, § 15.

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RAILROADS—Continued.
Liabilities of stock, 28, § 16.
Liabilities of stockholders, 28, § 17.
Real estate, how acquired, 28, § 18.
Materials for construction, 28, § 19.
Powers of companies, 29, § 20.
Personal property, liable to execution, 30, § 21.
Stock and bonds, for what issued, 31, § 22.
Consolidations, 31, § 23.
Report to auditor, 31, § 24.
Discriminations and extortions, 31, § 25.
Cumulative voting, 31, § 26.
Rates, when aid induced, 31, § 27.
Commencement of construction, 32, § 28.
Repealing clause, 32, § 29.
Power to borrow money, 33, § 30.
Debts, how created, 33, § 31.
Records of mortgage, 34, § 33.
May contract with each other, 34, § 34.
May connect with each other, 34, § 35.
Connections at bridges, 34, § 36.
May purchase from lessors, 35, § 37.
Union depots, 35, § 35 to § 43.
May own water craft, 37, § 44.
Depots to be built, 38, § 45.
Penalty for failure to build, 38, § 46.
Fence within six months, 38, § 47.
Right of way clear of combustibles, 39, § 48.
Right of way, persons and animals to be kept off, 39, § 49.
Neglect to fence, 39, § 50.
Adjoining owner may build, 39, § 51.
Boards at crossings, 40, § 52.
Bell and whistle at crossing, 40, § 53.
Killing stock, frightening teams, 40, § 54.
Starting train without signal, 40, § 55.
Approaches at crossings, 41, § 56.
Neglect to make crossings, 41, § 57.
Authorities to make crossings, 41, § 58.
Company to pay, 41, § 59.
Drawbridge crossing, 41, § 60.
Penalty for violating preceding clauses, 41, § 61.
Not to obstruct highway, 42, § 62.
Stoning train, 42, § 62.
Penalty for stoning train, 42, § 63.
Minors to keep off cars, 42, § 64.
Agent to make complaint, 42, § 65.
Penalty against minors, 42, § 66.
Train, how to make up, 43, § 68.
Must furnish cars, 43, § 69.
Damages for refusing to furnish cars, 43, § 70.
Transportation of Cherokee cattle under act of 1869, 43, § 71.
Speed through cities, 44, § 72.
Time of stop at stations, 44, § 73.
Brakeman on passenger cars, 44, § 74.
Brakemen on freight cars, 44, § 75.
Penalty for violating three preceding sections, 45, § 76.
Checks for baggage, 45, § 77.
Baggage smashing, 45, § 78.
Putting off passengers, 45, § 79.
Employes to wear badge, 45, § 80.
Liability not limited. 46, § 81.
Passenger cars furnished with, ax, saw, etc., 46, § 82.
Couplings, 46, § 83.
To provide flagman in cities, 46, § 84.
Penalties for violating preceding sections, 47, 85.
Corporation defined, 47, § 86.
Fires caused by locomotives, 47, § 87.
Agents to have certificate, 47, § 88.
Redemption of tickets by, 48, § 92.
Penalty for refusing to redeem, 48, § 93.
Receive grain without distinction, 49, § 97.
Must erect and maintain scales, 50, § 98.
Must deliver grain, 50, § 99.
Must permit change of consignment of grain, 51, § 100.
Rights to receive on track, 51, § 101.
Must receive and deliver grain at crossings, 52, § 102.

RAILROADS—Continued.
Contractors lien against, 56, § 113.
Sub-contractors lien against, 57, § 114.
Notice of claim of lien against, 57, § 115.
Manner of notice of lien against, 57, § 116.
Suit and transcript in lien cases against, 57, § 117.
Attorney's fees assessed as costs against, 58, § 118.
Original contractor failing, 58, § 119.
Liens against limitation of, 58, § 120.
Penalty for refusing to report. 94, § 16.
Suits against, how prosecuted, 94, §§ 17 and 18.
Rights of individuals against road, 94, § 19.
To place cars convenient for unloading, 85, § 20.
Not to combine, with warehousemen, 86, § 21.
Commissioners have rights to pass on, 90, § 5.
Report of to commission; what must report, 90, § 6.
Must answer additional inquiries, 92, § 7.
Who to report, 92, § 8.
Books of, subject to examination, 93, § 13.
Combining to injure, 113, § 19.
Attempt to injure, 114, § 21.
Influencing others to injure, 114, § 22.
Engineers, liable for killing stock, 114, § 23.
Purchasing property. 116, § 29.
Offense on cars, 116, § 30.
Obstructing business of, 118, § 38.
Conspiracy to impede business of, 118, § 39.
Quitting employment of, how construed, 119, § 40
Notice to in laying out public roads, 121. §§ 6 and 7.
To make and record plats, when, 122, § 13.

S

STATE.
Not to loan its credit to corporations, 7, § 2 and 11, § 24.
STOCK, CAPITAL.
Transfers of, at public office, 8, § 8.
Consolidation of, when prohibted, 9, § 10.
For what issued, 9, § 12.
Fictitious issue of, void, 9, § 12.
Sixty days' notice, for increase of, 9, § 12.
Municipal subscription to, forbidden, 11, § 23.
Transfer of, 27, § 14.
Increase of, 27, § 15.
Liabilities of, 28, § 16.
And bonds, for what issued, 31, § 22.
Consolidations, 31, § 23.
Fraudulent, 112, § 14.
Certificate of, signing with intent to issue, 113, § 15.
Sales of shares under execution, 15, § 15.
Number of shares certified, 15, § 16.
When purchaser entitled to certificate, 15, § 17.
Purchaser under execution, when entitled to dividends, 15, § 18.
May change from even to odd number of directors, 16, § 20.
Special meetings, how called, 16, § 21.
Manner of voting, 16, § 22.
Certificate of vote filed, 17, § 23.
Subscription to, 27, § 13.
STOCKHOLDERS.
Meetings of, 12, § 1.
Special meetings, how called, 13, § 2.
May vote, how, 13, § 3.
Certificate of vote to be filed, 13, § 4.
Changes of organization to be published, 14, § 5.
Shares of stock subject to execution, 15, § 13.
To elect directors, 25, § 8.
How may call meetings, 26, § 9.
To have access to all books, 26, § 10.
Election of directors, 26, § 11.
To pay assessment under penalty, 27, § 13.
May increase capital stock, 27, § 15.

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STOCKHOLDERS—Continued.
Liabilities of, 28, § 17.
Cumulative voting, 31, § 26.
Debts, how created, 33. § 31.
Notice of meetings, 33, 32.
Record of mortgage, 34, § 33.

T

TOWNS.
Municipal bonds in aid of railroads, 58 to 71.
THISTLES.
Canada, 109, § 4.
Railroads to destroy, 110, § 5.
TAXES.
How raised for payment of bonds in aid of railroads, 58 to 71.
TRAINS.
Obstruction of, 114, § 20.
TRANSPORTATION.
Reasonable rates for, 9, § 11.
Rates, when aid induced, 31, § 27.
Cherokee cattle under act of 1869, 43, § 71.
TAXES.
See revenue.
TICKETS.
Railroad cancellation, etc., of, 111, § 9.

W

WAREHOUSES.
What constitutes public, 10, § 15.
Owners of, to make statement underoath, 10, § 16.
Property stored in, examined by whom, 10, § 17.
Receipts regulated by law, 11, § 20.
Three classes of, 77, § 1.
Three classes defined. 77, § 2.
License for class "A," 78, § 3.
WAREHOUSES—Continued.
Receipts negotiable, 86, § 23.
Fraudulent receipts issued—penalty, 86, § 24.
Must have copy of act posted, 86, 26.
Landings may be leased for, 88, § 33.
License of may be cancelled, when, 93, § 12.
Books of subject to examination, 93, § 13.
Burning of, 109, § 3.
WAREHOUSEMEN.
Must have license, 78, § 3.
Must give bond, 78, § 4.
Penalty, without license, 78, § 5.
Not to mix grain, 78, § 6.
Shall issue receipt, 79, § 7.
Shall cancel receipts, 79, § 8.
How receipts to be issued and cancelled, 79, § 9.
Not to limit liability, 80, § 10.
Shall deliver property, 80. § 11.
Must post statement of grain, 80, § 12.
Must make daily statement to Registrar, 80, § 12.
When must publish rates, 82, § 14.
When not held for loss by fire and heating, 83, § 15.
To treat grain out of condition, how, 83, § 15.
Not to mix grain of different grades, 84, § 16.
To permit examination of scales, 84, § 17.
Not to receive grain until inspected, 85, § 18.
Not to combine with railroads, 86, § 21.
When may be sued, 86, § 22.
Receipts of, negotiable, 86, § 23.
Issuing false receipts, penalty, 86, § 24.
To post copy of act, 86, § 26.
To furnish statement to commissioners, 92, § 9.
Penalty for refusing to report, 94, § 16.
Rights of individuals against saved, 94, § 19.
Fraudulent receipts of, 113, § 16.
And others issuing fraudulent receipts, 113, § 17.

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